

SENATE BILL REPORT

ESB 6167

As Passed Senate, February 13, 2024

Title: An act relating to adopting the recommendations of the capital projects advisory review board regarding local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts.

Brief Description: Concerning local government procurement rules.

Sponsors: Senator Hasegawa.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/18/24, 1/30/24 [DP, w/oRec].

Floor Activity: Passed Senate: 2/13/24, 49-0.

Brief Summary of Engrossed Bill

- Delays the effective date the definitions of lowest responsible bidder and prudent utility management applies to certain local governments.
- Delays the effective date of the provision authorizing certain local governments to have their own regularly employed personnel perform work without a contract.
- Requires the Capital Projects Advisory Review Board to review provisions and make recommendations to the Legislature no later than October 31, 2024.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Majority Report: Do pass.

Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Kauffman and Short.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senator Torres, Ranking Member.

Staff: Maggie Douglas (786-7279)

Background: Public Works Projects. Public work is all work, construction, alteration, repair, or improvement, other than ordinary maintenance, executed at the cost of the state or of any municipality.

Every city, county, town, port district, district, or other public agency authorized to execute public work must follow specified requirements for competitive bidding for public works projects. Specific requirements vary by the type of municipality and certain exemptions are provided.

State agencies and local governments may create a small works roster of contractors for certain work estimated to cost \$350,000 or less. Bids may be solicited from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder.

In lieu of the small works roster process, local governments may award a contract for certain public works projects estimated to cost less than \$50,000 by soliciting bids from a minimum of three contractors from the appropriate small works roster. State law requires local agencies to award public works contracts to a responsible bidder with the lowest responsive bid, otherwise referred to as the lowest responsible bidder.

2023 Legislative Updates to Local Government Procurement Rules. In 2023 the Legislature passed HB 1621, amending the following provisions governing local procurement rules:

- beginning June 30, 2024, for public utility districts:
 1. the amount for which any work ordered by a PUD commission must be by contract is increased from \$50,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved; and
 2. a definition of lowest responsible bidder is added; and
- beginning June 30, 2024, for water-sewer districts:
 1. the amount for work for which water-sewer districts must solicit bids and award contracts is increased from \$50,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved;
 2. a water-sewer district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract; and
 3. a definition of lowest responsible bidder is added; and
- beginning June 30, 2024, for first class cities:
 1. a first-class city may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management

- without a contract; and
- 2. a definition of lowest responsible bidder is added; and
- beginning June 30, 2024, for second-class cities or towns:
 1. the amount for which a second-class city may contract for public works that involve more than one craft or trade without a competitive bidding process is increased from \$116,155 to \$150,000;
 2. any purchase of supplies, material, or equipment, except for public works improvements, with an estimated cost over \$40,000 must be by contract;
 3. any purchase of materials, supplies, or equipment with an estimated cost of less than \$50,000 must be made using the process for limited public works projects; and
 4. a second-class city or town may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract; and
- beginning June 30, 2024, for fire protection districts:
 1. the amount for projects and materials for which formal sealed bids are not required is increased from \$40,000 to \$75,500;
 2. the amount for projects for which the limited public works process may be used is increased from \$75,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved;
 3. a fire protection district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract; and
 4. a definition of lowest responsible bidder is added.

Capital Projects Advisory Review Board. The Capital Projects Advisory Review Board (CPARB), in the Department of Enterprise Services, provides evaluations of public capital projects construction processes, including the impact of contracting methods on project outcomes, and advises the Legislature on policies related to public-works delivery methods and alternative public-works contracting procedures. In December 2023 CPARB completed its review of the provisions of HB 1621 and distributed the report to the Legislature.

Summary of Engrossed Bill: The implementation timeline for certain provisions included in HB 1621 is amended as follows:

- for public utility districts:
 1. beginning July 1, 2025, a definition of lowest responsible bidder is added; and
- for water-sewer districts:
 1. beginning July 1, 2025, a water-sewer district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract; and
 2. beginning July 1, 2025, a definition of lowest responsible bidder is added; and
- for first class cities:
 1. beginning July 1, 2025, a first-class city may have its own regularly employed personnel perform work which is an accepted industry practice under prudent

- utility management without a contract; and
- 2. beginning July 1, 2025, a definition of lowest responsible bidder is added; and
- for second-class cities or towns:
 - 1. beginning July 1, 2025, a second-class city or town may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract; and
- for fire protection districts:
 - 1. beginning July 1, 2025, a fire protection district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract; and
 - 2. beginning July 1, 2025, a definition of lowest responsible bidder is added.

CPARB must review the provisions of this bill and make recommendations to the appropriate committees of the legislature no later than October 31, 2024.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony: PRO: HB 1621 was passed unanimously through the Legislature last year, 2023, but there were some concerns from certain stakeholders, so the bill was delayed until 2026. CPARB did an analysis of the bill and built consensus about the contracting requirements. CPARB assembled a committee and reached unanimous consensus of the requirements reflected in this bill. This bill reflects the threshold levels that area appropriate for each local government. The adjusted thresholds will allow local governments to be nimble and respond to emergency situations if needed. Stakeholders needed a better definition of prudent utility management.

CON: This bill needs to better define prudent utility management. Small fire districts are working to update the complicated legal and policy updates based upon HB 1621. The updates take a lot of time, effort, and resources to implement. This bill would require another quick turnaround for small districts with limited resources to implement. The committee that CPARB put together did not include fire protection districts or water-sewer districts and they did not have formal input into this bill. HB 1621 was passed unanimously and deserves to be implemented before its amended.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Brandy DeLange, Association of Washington Cities; Janice Zahn; Keith Michele; Michael Transue, Mechanical Contractors Association of SWestern WA.

CON: Scott Hazlegrove, WA Association of Sewer & Water Districts; Joren Clowers, Sno-King Water District Coalition; Brian Snure, Washington Fire Commissioners Association.

Persons Signed In To Testify But Not Testifying: No one.