HOUSE BILL REPORT
ESHB 1635

As Passed Legislature

Title: An act relating to ambulance and emergency medical service funding.

Brief Description: Modifying local emergency medical service funding provisions.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Kessler, Haler, Clibborn, Jarrett, O'Brien, Hankins, Ericks, Grant, Buck, Chase and Kenney).

Brief History:

Committee Activity:

Local Government: 2/21/05, 3/1/05 [DPS].

Floor Activity:

Passed House: 3/11/05, 90-4.
Senate Amended.
Passed Senate: 4/13/05, 34-11.
House Refused to Concur.
Senate Amended.
Passed Senate: 4/21/05, 37-10.
House Concurred.
Passed House: 4/21/05, 95-2.
Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Authorizes cities to establish ambulance services to be operated as public utilities.
- Imposes certain restrictions upon a city's authority to establish an ambulance service utility in an area in which a private ambulance service is already operating.
- Authorizes cities to set and collect rates and charges in an amount sufficient to regulate, operate, and maintain an ambulance utility and specifically allows such rates and charges to be based upon availability as well as the demand placed upon the utility.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Simpson, Chair; Clibborn, Vice Chair; Schindler, Ranking Minority Member; B. Sullivan and Takko.

Minority Report: Do not pass. Signed by 2 members: Representatives Ahern, Assistant Ranking Minority Member; and Woods.

Staff: CeCe Clynch (786-7168).

Background:

Cities have, for some time, been statutorily authorized to establish a system of ambulance service to be operated as a public utility when the city is not adequately served by existing private ambulance service. They also have the authority to levy and collect:

- a business and occupation tax for the privilege of engaging in the ambulance business; and
- excise taxes from persons, industry, and businesses who are served and billed for ambulance service.

All proceeds must be used only for the operation, maintenance, and capital needs of the municipally owned, operated, leased, or contracted for ambulance service.

Pursuant to an ordinance adopted in 1989, the City of Kennewick imposed what it called an "excise tax" in the form of a monthly flat fee of $2.60 upon each household, business, and industry within the area served by the emergency medical and ambulance service. The city's authority to do so was challenged in court. Subsequent to the case being filed, the ordinance was amended to change the "excise tax" to a "utility charge" but, according to the court, it remained the same in all other respects except for the name.

In Arborwood Idaho, L.L.C. v. City of Kennewick, the Washington Supreme Court held that the city lacked necessary, specific statutory authority to levy an excise tax upon all households, businesses, and industry for availability, as opposed to actual utilization, of the ambulance service. The court further held that the charge did not meet the test for a regulatory fee and, instead, was an unauthorized tax. In holding that the charge was not a fee, but a tax, the court noted that it was a flat charge which did not take into account benefits or burdens.

Summary of Engrossed Substitute Bill:

Specific findings are included as to the benefit to persons, businesses, and industries from the availability of ambulance and emergency medical services. It is explicitly recognized that cities have the ability and the authority to collect utility service charges to fund such services and that rates and charges may reflect, at least in part, a charge for the availability of the service.

Cities are specifically authorized to establish ambulance services to be operated as public utilities. There are limitations placed on cities' authority to establish an ambulance service

utility where there is already a private ambulance service in operation. If a private service is already in operation, a city may not establish an ambulance service utility unless the legislative authority of the city determines that the private service is inadequate in light of published objective generally accepted medical standards and reasonable levels of service. Generally, preliminary conclusion of inadequacy triggers a sixty day period within which the private ambulance service may attempt to meet the generally accepted medical standards and reasonable levels of service. A city is not required to afford a sixty day period within which to cure inadequacy if the private ambulance service: (1) has already been afforded a sixty day cure period within a twenty four month period; or (2) is not licensed by the Department of Health (DOH) or has had its license denied, suspended, or revoked by the DOH.

Cities operating an ambulance service utility may set and collect rates and charges in an amount sufficient for regulation, operation, and maintenance. Prior to setting such rates and charges, a city must complete a cost-of-service study. Total costs for the purpose of determining rates and charges may not include capital costs of construction, major renovation, or major repair of the physical plant.

Once total costs are determined, a city is to identify what portion of the total costs is attributable to availability and what portion is attributable to demand:

- Availability costs include costs for dispatch, labor, training, equipment, patient care supplies, and maintenance of equipment. These costs are to be uniformly applied across all utility user classifications.
- Demand costs include costs related to the burden placed on the ambulance service by individual calls for service, including frequency of calls, distances from hospitals, and other factors identified as burdens in the cost-of-service study. Demand costs are to be billed to each utility user classification based on such user classification based on such user classifications's burden on the ambulance service.

Combined rates must reflect an exemption for persons who are Medicaid eligible and reside in a nursing facility, boarding home, adult family home, or receive in-home services. These combined rates may reflect an exemption or reduction for designated classes consistent with Article VIII, Section 7 of the Washington Constitution which prohibits the lending of money or credit by cities except for the necessary support of the poor and infirm. The amounts of exemption or reduction are to be categorized as a general expense of the utility and designated as an availability cost. Small cities with fewer than 2500 residents which established an ambulance utility before May 6, 2004, which was the date of the Arborwood decision, may but are not required to grant such exemptions or reductions.

Cities must continue to allocate at least seventy percent of the total amount of general fund revenues expended prior to the Arborwood decision for regulating, operating, and maintaining the ambulance service utility. Where general funds and ambulance service dollars were commingled, provision is made for the city to estimate the amount of general fund dollars which were applied toward the ambulance service and continue to apply seventy percent of the estimated amount toward the ambulance service utility. Those cities which first establish an ambulance service utility after the Arborwood decision must allocate, from the general fund or emergency medical service levy fund, or a combination of both, an amount which is at least

equal to seventy percent of the total costs necessary to regulate, operate, and maintain the ambulance service utility as of May 5, 2004.

From available emergency medical service levy funds, cities must allocate toward the total costs of the ambulance service utility an amount proportionate to the percentage which ambulance service costs bear to total emergency service costs. All revenues received from direct billing of individual users must be applied toward the demand costs.

Total revenue from rates and charges must not exceed the total costs and all such revenue must be deposited in a separate fund or funds which may only be used for the ambulance utility.

The Joint Legislative Audit and Review Committee (JLARC) is to study and review ambulance utilities operated under this act and present a final report by December 2007. Factors to be reviewed include: the number and operational status of such utilities; whether the rate structures and user classifications were established in accordance with generally accepted utility rate-making practices; and the rates charged.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: With the Supreme Court decision, many cities lost the ability to supply ambulance service. This bill is important to the survival of these cities' ambulance services. Charging only for actual use is a poor way to fund this service. Cities have the authority to operate this service as a public utility. They need to have the flexibility to structure fees. For over 30 years, the City of Richland has operated an ambulance service and has received many compliments on their service. At this point, the Richland ambulance service is funded only through June 2005. With the Supreme Court decision, the service lost up to $600,000. This was a fee which was palatable to the citizens. In contrast, a recent effort to fund an Emergency Medical Services levy lid to raise these funds from an alternative source, the property tax, failed. The only ambulance service in Aberdeen is the city service. Aberdeen will not be able to cover the costs of the service by relying solely on a per ride basis. The only way such a service will work is to use the utility model as was done for years. Twelve cities had ambulance services funded in this manner: Kennewick, Aberdeen, Bothell, Bridgeport, Bothell, Ellensburg, Hoquiam, Mercer Island, Montesano, Port Angeles, Richland, Sunnyside, and Pasco. This bill would be unlikely to put private ambulance services out of business because: (1) there would first have to be a determination of inadequacy on the part of the private service; and (2) cities that are not already operating ambulance services will not be anxious to get into this business. Cities must have an adequate, fair funding source for ambulance services and this accomplishes that. There are protections for private services. The EMS levies do not provide a fair and adequate alternative funding source, especially when

real property, such as that in the Grays Harbor area, has a low assessed value. Such a funding source would not cover the need. A levy shifts the costs to high end homes and big industry and this is unacceptable and bears no relation to actual use of ambulance and EMS. There is statutory authority to operate as a utility already. This bill is needed to allow funding as a utility.

Testimony Against: This bill would allow ambulance and emergency medical services to be funded with a utility fee. Cities should not be given the authority to determine whether a private service is adequate. This is like having the fox guard the henhouse. It should be the role of an outside entity. If this bill passes, cities would have no incentive to use general funds or pass EMS levies. This amounts to a tax on seniors. Facilities should not be considered the end user. It is the individual who is the end user. Senior citizens and the ill and vulnerable will be hardest hit. There was not a problem with the way the 10-12 cities operated and funded this service prior to the Supreme Court decision. There is a fear that some cities will use this bill to increase the fee tenfold. This is a tax not a fee. The bill does not solve the problem and is unconstitutional. Money for these services can be raised by way of the property tax or an excise tax but not via the mechanism contained in this bill.

Persons Testifying: (In support) Representative Kessler, prime sponsor; Representative Haler; Carol Moser, Grant Baynes and Scott Brines, City of Richland; Eric Nelson, City of Aberdeen; Jim Justin, Association of Washington Cities; Dan McKeen, Port Angeles Fire Chief; Londi Lindell, Mercer Island City Attorney; and Bud Sizemore, Washington State Council of Fire Fighters.

(Opposed) Bob Bershauer, American Medical Response; Deb Murphy, Washington Association of Housing for Seniors; Kevin Fletcher, Washington Healthcare Association; Jerry Neilly; and Doug Neyhart and Bill Severson, Rental Housing Association of Puget Sound.

Persons Signed In To Testify But Not Testifying: None.