FINAL BILL REPORT
ESHB 1635

C 482 L 05
Synopsis as Enacted

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).

House Committee on Local Government
Senate Committee on Government Operations & Elections

Background:

Cities have statutory authorization 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 an ambulance service that is municipally owned, operated, leased, or contractually created.

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 superior court. While the court proceedings were pending, the ordinance was amended to change the "excise tax" to a "utility charge." However, the superior court ruled that regardless what name was attached to the fee, it operated as an excise tax. (*Arborwood Idaho v. City of Kennewick*)

In its ruling on the *Arborwood* case, 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:

Findings are stated that the provision of ambulance and emergency medical services will benefit persons, businesses, and industries. 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, a preliminary determination 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 must identify what portion of the total cost 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 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 the provision 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 (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 Local Government 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.

Votes on Final Passage:

House	90	4	
Senate	34	11	(Senate amended)
House			(House refused to concur)
Senate	37	10	(Senate amended)
House	95	2	(House concurred)

Effective: July 24, 2005