

SENATE BILL REPORT

ESHB 1635

As Reported By Senate Committee On:
Government Operations & Elections, April 1, 2005

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

Brief Description: Modifying local emergency medical service funding provisions.

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

Brief History: Passed House: 3/11/05, 90-4.

Committee Activity: Government Operations & Elections: 4/1/05 [DPA].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Fairley, Kline, Mulliken and Pridemore.

Staff: Mac Nicholson (786-7445)

Background: A city, town, or regional fire protection service authority may establish and operate an ambulance service as a public utility, if the legislative authority of the city, town, or fire service authority determines that their jurisdiction is not adequately served by existing private ambulance service. The legislative authority of the city or town is also authorized to adopt and levy an excise tax from all persons, businesses, and industries who are served and billed for the ambulance service.

A number of cities, including the city of Kennewick, have created ambulance services and funded them through a monthly ambulance charge on each household, business, and industry within the city. Kennewick's imposition of a monthly charge was challenged by Arborwood, which owned an apartment complex in the city. The case ultimately made its way to the state supreme court, where the court found that the imposition of a monthly ambulance charge exceeded the scope of statutory authority given to the cities to fund an ambulance service. A municipality can only levy and collect taxes if given the express authority to do so. The court reasoned that the ambulance service enabling statutes authorized only an excise tax, and because Kennewick's monthly charge was not an excise tax, the city was exceeding the authority granted by the statutes.

Kennewick also argued that the ambulance charge was valid because it was a utility fee, which is something a city can impose without express authority. To be a valid fee, the charge must pass examination under a three part test commonly referred to as the Covell test, which was established by the court in previous decisions. After analyzing Kennewick's charge under the Covell test, the court found that the charges were not a valid fee, but rather were an unauthorized tax.

As a result of *Arborwood v. Kennewick*, cities that operate ambulance services and funded the services through a monthly charge have had to stop imposing the charge, leaving many cities without an adequate funding mechanism for the ambulance service.

Summary of Amended Bill: The bill finds that ambulance and emergency medical services are essential services. The intent, as stated in the bill, is to explicitly recognize local jurisdictions' ability and authority to collect utility charges to fund ambulance and emergency medical service systems.

A city or town is authorized to set and collect rates and charges in an amount sufficient to regulate, operate, and maintain an ambulance utility. The ambulance utility cannot compete with any existing private ambulance service, unless the city or town determines that the city or town is not adequately served. Prior to an adequacy determination, the city or town must establish and publish performance standards, which can be no less stringent than standards adopted by the department of health.

Prior to setting rates, the legislative authority must conduct a cost of service study and determine the total costs necessary to operate the utility. The study must also determine the part of the total cost attributable to actual utilization of the service, and the part of the total cost attributable to the availability of the service. The total fee charged must reflect a combination of the availability and the demand costs. The rate attributable to costs for availability must be uniformly applied across user classifications, and the rate attributable to costs for demand shall be based on each user classification's burden on the utility. Rates and charges must reflect an exemption for persons who are medicaid eligible, and may reflect a reduction or exemption for designated classes consistent with the state constitution. Any exemptions or reductions are considered an expense of the utility, to be spread uniformly across all user classifications.

A city or town operating a utility must continue to fund the utility with at least 50% of the general fund revenues expended as of May 6, 2004, toward ambulance utility costs. Available emergency medical service levy funds must also be allocated to the ambulance utility in proportion to the percentage of total emergency medical service costs that are ambulance service costs.

Revenue generated by the rates and charges must not exceed the total costs of the utility and must be deposited in a separate fund and be used only for the purpose of regulating, maintaining, and operating the ambulance utility.

The Joint Legislative Audit Review Committee is instructed to study and review ambulance utilities established by cities and report to the legislature by December, 2007. The amount of \$65,000 is appropriated for the fiscal year ending June 30, 2006 for the study.

Amended Bill Compared to Original Bill: The bill as referred to committee was not considered.

Appropriation: \$65,000.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill addresses the problems created by the Arborwood decision. It will allow the 12 cities that had an ambulance service to continue to operate one in a manner that is constitutional and that protects nursing homes from extraordinary charges. The underlying bill represents hours of hard work and it is important that the bill keep moving through the process.

Testimony Against: The striking amendment eliminates important language in the bill concerning anti-compete language, non-supplant language, and language that tells cities how to calculate and distribute the utility fee. The striking amendment also makes a reduction for the poor or infirm discretionary rather than obligatory. The striking amendment would place the financial burden on private pay residents of nursing homes, and that is unfair.

Who Testified: PRO: Representative Simpson, prime sponsor.

CON: Bud Sizemore, Washington State Council of Firefighters; Susie Tracy, American Medical Response and Washington Association of Housing and Services for the Aging; Deb Murphy, Washington Association of Housing and Services for the Aging.