

# SENATE BILL REPORT

## SB 5624

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As of February 10, 2005

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

**Brief Description:** Authorizing local government funding of ambulance and emergency services.

**Sponsors:** Senators Kastama, McAuliffe, Hargrove, Weinstein, Spanel and Delvin.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/8/05.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**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 Bill:** The bill makes a number of legislative findings as follows: ambulance and emergency medical services are essential services; without a funding mechanism local governments will no longer be able to operate ambulance and emergency medical services; and that reliance of a funding policy which is based only on actual use would be inequitable and lead to disproportionate impacts on sick and injured persons. The intent, as stated in the bill, is to promote health, safety, and welfare of the people by clarifying that cities and towns can operate ambulance and emergency medical services as a public utility and to fix rates and charges for both the availability and the actual use of the services.

Prior to establishing an ambulance service, the city or town must first determine if the service is meeting relevant performance standards as adopted by the city or town. The performance standards must be established through adoption of a resolution after one or more public hearings on the performance standards. Adopted standards cannot be less stringent than existing standards adopted by the Department of Health or any other agency with jurisdiction. Performance standards may include response times, equipment, personnel, training, and other relevant requirements.

A city or town is authorized to set and collect rates and charges for the availability and actual use of an ambulance and emergency medical service system. The rates and charges are based on both the benefit conferred on ratepayers through the availability of the ambulance and emergency medical service, and on the burden produced to the utility by the ratepayer. Factors such as the frequency of calls made, distance to hospitals, and individual demands for service may be considered in setting the rates and charges. Revenue generated by the rates and charges must be deposited in a separate fund and be used only for the purpose of regulating, maintaining, and operating ambulance and emergency medical service system facilities. Refunds for charges collected by the city or town are not required for any period before the time a written appeal is filed by a party claiming a refund.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** Ambulance service is essential and the city needs to be able to fund it. The court struck down the flat fee approach, and cities need a new way to fund ambulance and emergency medical systems. Residents of Kennewick support the ambulance service and are willing to pay for it, but they do not want to pass a levy to do so. A property tax to support ambulance and emergency medical service would not be fair, as business would pay more money but use the services less. Without this bill, the only funding sources are general fund money or charging users of the service, both of which will not work. Cities provide more than just ambulance service, and they just need a sustainable, acceptable, stable funding source for ambulance and emergency medical service. Cities have the flexibility under the bill to alleviate impacts on low income and individuals in nursing and assisted living homes.

**Testimony Against:** An ambulance charge is not the only way to fund ambulance service. The legislature can just authorize a flat fee to fund the service, as the Arborwood case didn't reach the decision that such a fee was unconstitutional. Cities can create taxing districts to

fund the service, and statutes already authorize cities to create such districts. If the cities can't pass an EMS levy, they should not be allowed to fund the same services through a nonvoter approved fee. The bill targets seniors in nursing and assisted living homes and it is unfair, as they have the most difficulty paying for care in the first place. Ambulance fees aren't covered under medicare and medicaid programs, consequently the people responsible for paying the fees would be the small number of private pay individuals in nursing and assisted living homes. The Arborwood decision did not disturb emergency medical service funding, as emergency medical services are funded through general fund money. Allowing cities to fund emergency medical service through a fee or charge is just revenue shifting and amounts to people paying twice for the same service. This bill would eliminate private ambulance competition, as none of the private companies provide emergency medical service, they provide only ambulance service. Further the bill provides no reasonable opportunity for private companies to meet standards set by the city, and really its unclear whether the cities even have to meet their own standards. If this bill passes it will end up in court again, as the court has already struck it down.

**Who Testified:** PRO: Phil Watkins and John Ziobro, city of Kennewick; Eric Nelson, city of Aberdeen; Dan McKeen, city of Port Angeles; Carol Moser, Dave Arbaugh, and Grant Baynes, city of Richland.

CON: Kevin Fletcher, Life Care Puyallup; Bob Berschauer, American Medical; Deb Murphy, WAHSA; Kary Hyre, WA LTC Ombudsman; John Woodring and Doug Ngyhart, Rental Housing Association of Puget Sound.