

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON TECHNOLOGY AND INFRASTRUCTURE

Minutes of Meeting
Thursday, March 3, 2011
House Hearing Room 1 -- 9:00 a.m.

Chairman Stevens called the meeting to order at 9:21 a.m. and attendance was noted by the secretary.

Members Present

Mr. Dial
Ms. Proud

Mr. Seel
Mr. Wheeler

Mrs. Ugenti, Vice-Chairman
Mr. Stevens, Chairman

Members Absent

Mrs. Gonzales

Committee Action

SB1045 - DPA (6-0-0-1)

SB1171 - DP (5-1-0-1)

CONSIDERATION OF BILLS

SB1045 - DES; notices; electronic communications - DO PASS AMENDED

Vice-Chairman Ugenti moved that SB1045 do pass.

Chairman Stevens moved that the Stevens ten-line amendment dated 3/2/11 (Attachment 1) be adopted.

Stephanie Johnson, Majority Assistant Analyst, explained that SB1045 allows the Department of Economic Security (DES) and its divisions to provide certain administrative orders, notices, decisions and letters by electronic means if the recipient consents (Attachment 2). SB1045 clarifies how that consent may be obtained.

She explained that the Stevens ten-line amendment dated 3/2/11 (Attachment 1) removes language from an adopted Senate floor amendment and specifies that delivery by electronic means is considered complete upon transmission unless it is established that delivery of the notice failed due to department error or system failure outside the control of the recipient. It further specifies that the order, notice, decision or letter must be served by mail if electronic means fails.

Chairman Stevens asked if this is an “opt-in” program; Ms. Johnson replied in the affirmative.

Senator Don Shooter, sponsor, explained that this is an agency bill to enable DES to take advantage of technology and the cost savings that will result.

Vice-Chairman Ugenti announced the names of those who signed up as neutral on SB1045 but did not speak:

Edward Myers, Attorney, Arizona Center for Disability Law

Ellen Katz, Litigation Director, William E. Morris Institute for Justice, stated that electronic filing is a good thing, but she expressed concern about ensuring that the provisions are fair to the recipient. Her opposition to SB1045 focuses on the provision that states that *delivery is deemed complete upon transmission*. She requested that the bill be changed to preserve the right of the intended recipient to say that he or she did not receive the notice.

Mr. Seel asked if she had spoken to the sponsor of the bill or with DES. Ms. Katz replied in the affirmative, explaining that the provision was removed in the Senate, but now has been re-introduced in the House amendment.

Chairman Stevens stated that the program has an “opt-in” clause. Ms. Katz replied that someone should not have to give up the right to say “I did not receive the notice” in order to opt into the e-filing program. She reminded the Members that many people do not have the resources to challenge delivery that has been *deemed complete*. Discussion ensued about whether or not recipients lose the ability to protest if they *opt in* to this program.

Kathy Seeglitz Ber, Director of Legislative Services, Department of Economic Security, stated her support for SB1045, and added that she will look into Ms. Katz’ concerns.

Question was called on the motion that the Stevens ten-line amendment dated 3/2/11 (Attachment 1) be adopted. The motion carried.

Vice-Chairman Ugenti moved that SB1045 as amended do pass. The motion carried by a roll call vote of 6-0-0-1 (Attachment 3).

SB1171 - cities; acquisition of wastewater utility - DO PASS

Vice-Chairman Ugenti moved that SB1171 do pass.

Stephanie Johnson, Majority Assistant Analyst, explained that SB1171 allows a city or town to acquire all or any portion of a sewage system located within or serving the municipality from a county provided that the municipality acquisition is authorized by a majority vote of the qualified electors, and establishes requirements for the transfer process (Attachment 4).

Mr. Wheeler stated that this issue has been in litigation and debated for many years and he believes that there is an opportunity to have both sides broker a compromise which will be in the best interest of the users in that area.

Mr. Wheeler moved that SB1171 be postponed indefinitely. The motion failed by a roll call vote of 1-5-0-1 (Attachment 5).

Mr. Seel asked how water districts are handled, and particularly if there is a disparity between statutes that deal with Pima County and those that deal with the other counties in the state. Ms. Johnson explained that statute authorizes any county with a population between one million and two million persons to purchase, construct, or operate a sewage system provided the county secures the assent by resolution of the governing bodies of those incorporated cities and towns representing not less than one-half of the population of the county. She added that Pima County is the only county that this applies to at this time. Discussion ensued.

Mr. Seel asked if Pima County is the only county in the state that can do this. Ms. Johnson answered in the affirmative, reiterating that the population is what determines this authority.

Mr. Wheeler stated that there are legitimate arguments on both sides of this issue; he asked if the voters of Marana originally approved this arrangement through an intergovernmental agreement (IGA) with the county.

Senator Frank Antenori, sponsor, replied that an IGA is in place, but it is ignored and that is the reason for the lawsuit.

Mr. Seel asked if Marana requested to exit the IGA. Senator Antenori replied in the affirmative.

Senator Antenori clarified that this is a special situation in southern Arizona. He explained that the utility was not being properly run, so special statutes were set up. When cities annex or incorporate, they take the existing infrastructure without paying for it. He stated that Marana has been stifled by the southern Arizona anti-growth sentiment, demonstrated by the county retaining water and sewer services. He stated that SB1171 will allow Marana to control its own destiny and encourage growth if that is what the citizens support.

Mr. Dial asked why Pima County has this exemption. Senator Antenori explained that in the 1970s a special sewer district was formed which became overextended and failed. A judge then gave the sewer district to Pima County and the Legislature concurred; this is dramatically different from how sewer districts are run in the rest of the state.

Mr. Wheeler explained that his original concern was that this situation was being used as a tool to prevent growth, but after research he learned that economic problems have affected growth. The Southern Arizona Business Association (SABA) was unable to give him an example of how this is being used to prevent growth.

Senator Antenori stated that SABA is reluctant to take a position because the county and the City of Tucson exact retribution by not granting building permits. Mr. Seel cited companies and developments which stated that they had been denied sewer permits. Senator Antenori stated that these denials are justified by saying there is no capacity; he stated that Marana has offered to expand and create the capacity and should be given the opportunity to do so.

Michael Racy, Pima County, appeared in opposition to SB1171. He informed the Members that Jackson Jenkins, Director of Pima County Wastewater Division, is also present to provide technical input. Mr. Racy stated that this legislation comes out of a lawsuit filed in 2007 wherein the Town of Marana exercised its right under a 1979 IGA to get out of the regional wastewater system. The town had participated in and benefitted from that system for forty years. The IGA stated that the town would get the tributary infrastructure, but not the flow-through infrastructure; the IGA was silent on the sewer plants.

Mr. Racy clarified that, by Arizona law, Pima County may provide sewer services but there is no exclusivity in the law. Cities and towns also may operate sewer utilities. What is prohibited under the 1979 IGA is Marana taking the flow-through lines and the regional portions (the plant) of the sewer system. The court agreed that Marana can get out of the IGA with six months' notice and can set up its own sewer utility. Mr. Racy stated that SB1171 gives the flow-through lines to Marana without compensation, thereby reversing the decision of the court.

Mr. Racy explained why Pima County is in the business of providing sewer service. In the 1940s, Tucson was the only jurisdiction with a sewer plant, but there was already growth occurring in the unincorporated portions of the county that wanted sewer service. Tucson told the growth areas to build their own lines and Tucson would treat the sewage. Because of problems, courts awarded the entire district to Pima County to operate.

Mr. Dial asked Mr. Racy's response to the allegation that Pima County is denying sewer hookups. Mr. Racy explained that Pima County makes money by issuing sewer authorizations and there is no reason the County would deny sewer hookups. He noted that the building permits requested have dwindled from 13,000 per year at the peak of the real estate market to 1,800 last year due to the economy. He stated that the issue can be resolved, but that SB1171 is not the answer.

Mr. Seel asked about the capacity for development at the treatment plant. Mr. Racy explained that there is currently 700,000 gallons per day physical capacity at the plant; the physical utilization is about 250,000 gallons per day. The County has given out legal capacity of 1,200,000 gallons, which is in excess of the physical capacity but is routine because of the time it will take growth and development to catch up. The Arizona Department of Environmental Quality (ADEQ), however, has interceded and said that Pima County can issue no more authorizations until plans are in place to expand to 1,500,000 gallons.

Ms. Proud asked about Pima County's plans to invest \$26 million for expansions to the Marana wastewater plant on unincorporated Pima County land. Mr. Racy replied that \$26 million has already been expended. Discussion ensued about a park that was created around the plant, although the park has nothing to do with the wastewater facility. Mr. Racy reiterated that 80 percent of the lawsuit was over the flow-through lines and the sewer plant; the court stated that Marana has no claim for either and that the County's designations stand.

Mr. Seel stated that he understands that the court order makes no determination as to the status of the plant. Mr. Racy replied that Mr. Seel's understanding is from partial records; he reiterated that the issue was resolved in Pima County's favor against Marana and the award included court costs.

Ms. Proud asked if Marana has the right to annex the sewer plant. Mr. Racy explained that the court said no, the plant is not contiguous with the Town of Marana. Discussion ensued. Mr. Racy stated that the park designation occurred in 2007; he reiterated that riparian parks typically are co-located by wastewater plants as a *best practice*.

Mr. Wheeler stated his opinion that this is a local issue that should play out without the state interfering and that this is the reason he wished to hold the bill. He stated that Pima County will not stand in the way of growth, but this wastewater issue is a capacity issue wherein ADEQ has refused to grant permits. Mr. Racy concurred, adding that most issues with ADEQ have been resolved but there are problems on both sides. He stated that SB1171 as written overturns the court's decisions.

Discussion ensued about revenue bonds which go to the ballot.

Mr. Seel asked if the County would be amenable to Marana's offer to pay the full market value of the sewer plant. Mr. Racy replied that this could be discussed, but must include the value (equity) plus the flow issues. Discussion ensued on the value of the plant.

Vice-Chairman Ugenti announced the names of those who signed up in support of SB1171 but did not speak:

Stan Barnes, Town of Marana

Emily Ryan, Town of Marana

Vice-Chairman Ugenti announced the names of those who signed up in opposition to SB1171 but did not speak:

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Vice-Chairman Ugenti announced the names of those who signed up as neutral on SB1171 but did not speak:

Doug Cole, City of Tucson, Tucson Water

Gilbert Davidson, Town Manager, Town of Marana, spoke in support of SB1171 and explained that the Town of Marana:

1. wants to be like any other city in Arizona, and to anticipate and plan growth without interference from the county or any other entity.
2. wants to fully manage its water resources.
3. wants to encourage job creation and be a thriving community; the delays due to this sewer issue are inhibiting growth.

He stated that SB1171 is fair and reasonable and it does support the State's goal that cities and towns run efficient, well-managed utility systems.

In response to Members' questions, Mr. Davidson stated that:

- SB1171 fills a gap in state law and will give Marana the ability to build and maintain its own plant.
- Marana rates will be the same as Pima County rates today.

- Marana will pay fair market value for the sewer plant by paying off remaining debt.

Mr. Wheeler asked who is denying these permits: Pima County to inhibit growth or ADEQ to implement regulations. Mr. Davidson replied that Pima County has not been in compliance with ADEQ regulations and has issued additional capacity letters above the actual capacity of the plant. He stated that if Marana operated its own systems it would know when capacity levels are reached and expansion should begin.

Question was called on the motion that SB1171 do pass. The motion carried by a roll call vote of 5-1-0-1 (Attachment 6).

Without objection, the meeting adjourned at 10:59 a.m.

Jane Dooley, Committee Secretary
March 21, 2011

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)