

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1171

AN ACT

AMENDING SECTION 9-514, ARIZONA REVISED STATUTES; AMENDING TITLE 9, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-514.01; AMENDING SECTIONS 11-264 AND 41-1279.03, ARIZONA REVISED STATUTES; RELATING TO CITIES AND TOWNS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-514, Arizona Revised Statutes, is amended to
3 read:

4 9-514. Authority to engage in utility business

5 A. Except as provided in section 9-571, before construction, purchase,
6 acquisition or lease by a municipal corporation, as authorized in sections
7 9-511, 9-511.01, 9-511.02, 9-512, ~~and~~ 9-513 **AND 9-514.01**, of any plant or
8 property or portion of plant or property devoted to the business of or
9 services rendered by a public utility shall be undertaken, the construction,
10 purchase, acquisition or lease shall be authorized by the affirmative vote of
11 a majority of the qualified electors who are taxpayers of the municipal
12 corporation voting at a general or special municipal election duly called and
13 held for the purpose of voting upon the question.

14 B. This section does not apply to the construction, purchase,
15 acquisition or lease of water or sewage system utilities by a city or town
16 incorporated pursuant to section 9-101.02.

17 Sec. 2. Title 9, chapter 5, article 2, Arizona Revised Statutes, is
18 amended by adding section 9-514.01, to read:

19 9-514.01. Acquisition of county wastewater utility

20 A. A CITY OR TOWN AUTHORIZED TO OPERATE A WASTEWATER UTILITY BY THE
21 AFFIRMATIVE VOTE OF A MAJORITY OF THE QUALIFIED ELECTORS AS PROVIDED IN
22 SECTION 9-514 MAY ACQUIRE ALL OR ANY PORTION OF A SEWAGE SYSTEM LOCATED
23 WITHIN OR SERVING THE CITY OR TOWN AND OWNED OR OPERATED BY A COUNTY PURSUANT
24 TO SECTION 11-264 IN THE MANNER PROVIDED BY THIS SECTION.

25 B. TITLE TO ANY OR ALL SEWER PIPES, PUMPS AND OTHER SEWAGE COLLECTION
26 INFRASTRUCTURE LOCATED WITHIN THE CITY OR TOWN LIMITS SHALL BE TRANSFERRED TO
27 THE CITY OR TOWN AT THE REQUEST OF THE CITY OR TOWN.

28 C. TITLE TO ANY SEWAGE TREATMENT FACILITY LOCATED WITHIN OR OUTSIDE
29 THE CITY OR TOWN SHALL BE TRANSFERRED TO THE CITY OR TOWN AT ITS REQUEST IF
30 SEVENTY-FIVE PER CENT OR MORE OF THE SEWAGE TREATED AT THE FACILITY AS OF THE
31 DATE OF TRANSFER ORIGINATES FROM WITHIN THE CITY OR TOWN.

32 D. TITLE TO TREATMENT CAPACITY OF ANY COUNTY SEWAGE TREATMENT FACILITY
33 LOCATED WITHIN OR OUTSIDE THE CITY OR TOWN THAT IS COMMITTED TO TREATMENT OF
34 SEWAGE ORIGINATING FROM WITHIN THE CITY OR TOWN SHALL BE TRANSFERRED TO THE
35 CITY OR TOWN AT ITS REQUEST.

36 E. A CITY OR TOWN TRANSFER REQUEST PURSUANT TO SUBSECTION B, C OR D OF
37 THIS SECTION SHALL BE IN THE FORM OF A WRITTEN NOTICE DELIVERED TO THE CLERK
38 OF THE BOARD OF SUPERVISORS OF THE COUNTY AND SHALL STATE THE DATE OF
39 TRANSFER. THE DATE OF TRANSFER SHALL BE NOT LESS THAN THIRTY AND NOT MORE
40 THAN ONE HUNDRED EIGHTY DAYS AFTER THE DATE THE NOTICE IS DELIVERED TO THE
41 CLERK OF THE BOARD.

42 F. A CITY OR TOWN ACQUIRING ANY PORTION OF THE SEWAGE SYSTEM OR SEWAGE
43 TREATMENT CAPACITY TRANSFERRED PURSUANT TO SUBSECTION B, C OR D OF THIS
44 SECTION SHALL PAY OR ASSUME ALL OUTSTANDING INDEBTEDNESS ATTRIBUTABLE TO THE
45 TRANSFERRED INFRASTRUCTURE OR TREATMENT CAPACITY AS OF THE DATE OF TRANSFER.

1 THE COUNTY SHALL NOT INCUR NEW DEBT ATTRIBUTABLE TO THE TRANSFERRED
2 INFRASTRUCTURE OR TREATMENT CAPACITY AFTER THE DATE THE CITY OR TOWN'S NOTICE
3 OF TRANSFER IS DELIVERED TO THE CLERK OF THE BOARD.

4 G. EXCEPT AS OTHERWISE ALLOCATED IN AN INTERGOVERNMENTAL AGREEMENT
5 BETWEEN THE CITY OR TOWN AND THE COUNTY, A CITY OR TOWN IS RESPONSIBLE FOR
6 ALL COSTS OF OPERATION AND MAINTENANCE OF THE SEWAGE SYSTEM INFRASTRUCTURE
7 THAT IS ACQUIRED BY THE CITY OR TOWN PURSUANT TO THIS SECTION FROM AND AFTER
8 THE DATE OF TRANSFER.

9 H. EXCEPT AS OTHERWISE PROVIDED IN AN INTERGOVERNMENTAL AGREEMENT
10 BETWEEN THE CITY OR TOWN AND THE COUNTY, THE COUNTY SHALL NOT INVOICE OR BILL
11 SEWAGE SYSTEM FEES TO CUSTOMERS SERVED BY THE SEWAGE SYSTEM INFRASTRUCTURE
12 THAT IS TRANSFERRED TO THE CITY OR TOWN PURSUANT TO THIS SECTION AFTER THE
13 DATE OF THE TRANSFER. THE CITY OR TOWN IS RESPONSIBLE FOR ALL INVOICING AND
14 BILLING OF WASTEWATER UTILITY CUSTOMERS SERVED BY THE SEWAGE SYSTEM
15 INFRASTRUCTURE THAT IS ACQUIRED BY THE CITY OR TOWN PURSUANT TO THIS SECTION
16 AFTER THE DATE OF THE TRANSFER.

17 I. THE COUNTY MAY CONTINUE TO TRANSMIT SEWAGE ORIGINATING FROM COUNTY
18 SEWAGE SYSTEM CUSTOMERS THROUGH ANY SEWER PIPES, PUMPS AND OTHER SEWAGE
19 COLLECTION INFRASTRUCTURE TRANSFERRED TO A CITY OR TOWN PURSUANT TO THIS
20 SECTION. THE COUNTY SHALL PAY THE CITY OR TOWN'S ACTUAL OPERATION AND
21 MAINTENANCE COSTS ATTRIBUTABLE TO CONVEYANCE OF SEWAGE ORIGINATING FROM
22 COUNTY SEWAGE SYSTEM CUSTOMERS.

23 J. A CITY OR TOWN MAY TRANSMIT SEWAGE ORIGINATING FROM WASTEWATER
24 UTILITY CUSTOMERS OF THE CITY OR TOWN THROUGH ANY SEWER PIPES, PUMPS AND
25 OTHER SEWAGE COLLECTION INFRASTRUCTURE OWNED OR OPERATED BY THE COUNTY. THE
26 CITY OR TOWN SHALL PAY THE COUNTY'S ACTUAL OPERATION AND MAINTENANCE COSTS
27 ATTRIBUTABLE TO CONVEYANCE OF THE SEWAGE ORIGINATING FROM WASTEWATER UTILITY
28 CUSTOMERS OF THE CITY OR TOWN.

29 K. AT TREATMENT FACILITIES NOT TRANSFERRED TO THE CITY OR TOWN
30 PURSUANT TO THIS SECTION, THE COUNTY SHALL CONTINUE TO TREAT SEWAGE FROM
31 CUSTOMERS SERVED BY THE SEWAGE SYSTEM INFRASTRUCTURE ACQUIRED BY THE CITY OR
32 TOWN PURSUANT TO SUBSECTION B OF THIS SECTION. THE CITY OR TOWN SHALL PAY
33 THE COUNTY'S ACTUAL OPERATION AND MAINTENANCE COSTS ATTRIBUTABLE TO TREATMENT
34 OF THE SEWAGE ORIGINATING FROM WASTEWATER UTILITY CUSTOMERS OF THE CITY OR
35 TOWN.

36 L. THE CITY OR TOWN SHALL CONTINUE TO TREAT SEWAGE ORIGINATING FROM
37 COUNTY SEWAGE SYSTEM CUSTOMERS WHOSE SEWAGE IS TREATED AT A SEWAGE TREATMENT
38 FACILITY TRANSFERRED TO THE CITY OR TOWN PURSUANT TO SUBSECTION C OF THIS
39 SECTION. THE COUNTY SHALL PAY THE CITY OR TOWN'S ACTUAL OPERATION AND
40 MAINTENANCE COSTS ATTRIBUTABLE TO TREATMENT OF THE SEWAGE ORIGINATING FROM
41 COUNTY SEWAGE SYSTEM CUSTOMERS.

42 M. SUBJECT TO AVAILABILITY OF TREATMENT CAPACITY, THE CITY OR TOWN MAY
43 CONNECT NEW CITY OR TOWN WASTEWATER UTILITY CUSTOMERS WHOSE SEWAGE WILL BE
44 TREATED AT A SEWAGE TREATMENT FACILITY OWNED OR OPERATED BY THE COUNTY. THE
45 CITY OR TOWN SHALL PAY THE COUNTY'S ACTUAL CAPITAL COSTS ASSOCIATED WITH THE

1 CREATION OF THE SEWAGE TREATMENT CAPACITY NEEDED TO SERVE THE NEW CONNECTION.
2 THE CITY OR TOWN THEREAFTER SHALL OWN THE CAPACITY NEEDED TO SERVE THE NEW
3 CONNECTION AND SHALL PAY THE COUNTY'S ACTUAL OPERATION AND MAINTENANCE COSTS
4 ATTRIBUTABLE TO TREATMENT OF THE SEWAGE ORIGINATING FROM THE NEW WASTEWATER
5 UTILITY CUSTOMER.

6 N. SUBJECT TO AVAILABILITY OF TREATMENT CAPACITY, THE COUNTY MAY
7 CONNECT NEW COUNTY SEWAGE SYSTEM CUSTOMERS WHOSE SEWAGE WILL BE TREATED AT A
8 SEWAGE TREATMENT FACILITY OWNED OR OPERATED BY THE CITY OR TOWN. THE COUNTY
9 SHALL PAY THE CITY OR TOWN'S ACTUAL CAPITAL COSTS ASSOCIATED WITH THE
10 CREATION OF THE SEWAGE TREATMENT CAPACITY NEEDED TO SERVE THE NEW CONNECTION.
11 THE COUNTY THEREAFTER SHALL OWN THE CAPACITY NEEDED TO SERVE THE NEW
12 CONNECTION AND SHALL PAY THE CITY OR TOWN'S ACTUAL OPERATION AND MAINTENANCE
13 COSTS ATTRIBUTABLE TO TREATMENT OF THE SEWAGE ORIGINATING FROM THE NEW SEWAGE
14 SYSTEM CUSTOMER.

15 O. PROOF OF OUTSTANDING INDEBTEDNESS, ACTUAL OPERATION AND MAINTENANCE
16 COSTS AND ACTUAL CAPITAL COSTS THAT MAY BE CHARGED PURSUANT TO THIS SECTION
17 SHALL BE SUPPORTED BY AUDITABLE DOCUMENTATION PRESENTED BY THE ENTITY
18 ENTITLED TO PAYMENT. IF NOT SATISFIED WITH THE PROOF, THE ENTITY REQUIRED TO
19 MAKE PAYMENT UNDER THIS SECTION MAY REQUEST THE AUDITOR GENERAL TO PERFORM AN
20 INDEPENDENT AUDIT OF THE FINANCIAL RECORDS OF THE ENTITY ENTITLED TO PAYMENT.
21 THE ENTITIES SHALL BE BOUND BY THE FINDINGS IN THE AUDITOR GENERAL'S
22 INDEPENDENT AUDIT, WHICH SHALL ESTABLISH THE CORRECT AND FINAL PAYMENT AMOUNT
23 AND WHICH SHALL BE TREATED IN ALL RESPECTS AS A FINAL DECISION IN BINDING
24 ARBITRATION. THE AUDITOR GENERAL SHALL CHARGE THE COSTS OF THE INDEPENDENT
25 AUDIT TO ONE OR BOTH OF THE ENTITIES, TAKING INTO CONSIDERATION THE OUTCOME
26 OF THE AUDIT COMPARED TO THE AMOUNT PRESCRIBED IN THE DOCUMENTATION PRESENTED
27 BY THE ENTITY ENTITLED TO PAYMENT. THE ENTITY BEING AUDITED SHALL PROVIDE
28 THE AUDITOR GENERAL UNLIMITED ACCESS TO THE ENTITY'S FINANCIAL RECORDS
29 RELATING TO THE WASTEWATER UTILITY OPERATION. THE AUDITOR GENERAL SHALL
30 CALCULATE THE COST TO ENSURE THAT THIS STATE DOES NOT INCUR ANY COST OF THE
31 AUDIT.

32 P. FOR THE PURPOSES OF THIS SECTION, ACTUAL COSTS SHALL NOT INCLUDE
33 COSTS ATTRIBUTABLE TO ADMINISTRATIVE OVERHEAD OF THE ENTITY INVOLVED IN THE
34 TRANSFER.

35 Q. THIS SECTION DOES NOT RESTRICT THE AUTHORITY OF A CITY OR TOWN TO
36 PROVIDE WASTEWATER UTILITY SERVICE TO CUSTOMERS OUTSIDE OF THE CITY OR TOWN
37 LIMITS.

38 R. A CITY OR TOWN MAY BRING A SPECIAL ACTION IN THE NATURE OF MANDAMUS
39 AGAINST A COUNTY THAT FAILS TO MAKE A TRANSFER REQUESTED UNDER SUBSECTION B,
40 C OR D OF THIS SECTION. IF THE CITY OR TOWN PREVAILS IN THE ACTION THE COURT
41 SHALL AWARD ATTORNEY FEES TO THE CITY OR TOWN.

1 Sec. 3. Section 11-264, Arizona Revised Statutes, is amended to read:
2 11-264. Authority to operate a sewage system; liens; sewage
3 system user fees

4 A. SUBJECT TO THE RIGHTS OF A CITY OR TOWN PURSUANT TO SECTION
5 9-514.01, any county with a population between one million and two million
6 persons may purchase, construct or operate a sewage system, including the
7 collection, transportation, pumping, treatment and disposal of sewage, and
8 charge fees and levy taxes therefor, provided the county secures the assent
9 by resolution of the governing bodies of those incorporated cities and towns
10 representing not less than one-half of the population of the county before
11 purchase, construction or operation of a sewage system, provided that once an
12 initial assent is given no further assent is necessary to operate or improve
13 the system.

14 B. The provisions of this section are declaratory of existing law and
15 shall not affect the validity of the authorization or issuance of any bonds
16 by a county for sewage purposes.

17 C. A county may file a lien on property for the nonpayment of sewage
18 system user fees for services provided to the property if the payment of the
19 fees is delinquent for more than ninety days.

20 D. Before filing the lien, the county shall provide written notice to
21 the owner of the property. The notice shall be given at least thirty days
22 before filing the lien and shall include an opportunity for a hearing with a
23 designated county official. The notice shall be either personally served or
24 mailed to the property owner, at the last known address by certified mail, or
25 to the address to which the tax bill for the property was last mailed. If
26 the owner does not reside on the property, the notice shall be sent to the
27 last known address.

28 E. The unpaid sewage system user fees, from the date of recording in
29 the office of the county recorder in the county in which the property is
30 located, are a lien on the property until the fees are paid. The lien is
31 subject and inferior to the lien for general taxes and to all prior recorded
32 mortgages and encumbrances of record. A sale of the property to satisfy a
33 lien obtained under this section shall be made on judgment of foreclosure and
34 order of sale. A county may bring an action to enforce the lien in the
35 superior court in the county in which the property is located at any time
36 after the recording, but failure to enforce the lien by this action does not
37 affect its validity. The recorded unpaid sewage system user fees are prima
38 facie evidence of the truth of all matters recited in the recording and of
39 the regularity of all proceedings before the recording.

40 F. Unpaid sewage system user fees pursuant to this section accrue
41 interest at the rate prescribed by section 44-1201.

42 G. A prior assessment of unpaid sewage system user fees for the
43 purposes provided in this section does not bar a subsequent assessment for
44 these purposes and any number of liens on the same lot or tract of land may
45 be enforced in the same action.

1 H. Subsection C of this section does not apply to residential property
2 occupied by a lessee where the lessee is responsible for payment of the
3 sewage system user fees. The county shall determine the status of leased
4 residential property before filing the lien.

5 Sec. 4. Section 41-1279.03, Arizona Revised Statutes, is amended to
6 read:

7 41-1279.03. Powers and duties

8 A. The auditor general shall:

9 1. Prepare an audit plan for approval by the committee and report to
10 the committee the results of each audit and investigation and other reviews
11 conducted by the auditor general.

12 2. Conduct or cause to be conducted at least biennial financial and
13 compliance audits of financial transactions and accounts kept by or for all
14 state agencies subject to the single audit act of 1984 (P.L. 98-502). The
15 audits shall be conducted in accordance with generally accepted governmental
16 auditing standards and accordingly shall include tests of the accounting
17 records and other auditing procedures as may be considered necessary in the
18 circumstances. The audits shall include the issuance of suitable reports as
19 required by the single audit act of 1984 (P.L. 98-502) so the legislature,
20 federal government and others will be informed as to the adequacy of
21 financial statements of the state in compliance with generally accepted
22 governmental accounting principles and to determine whether the state has
23 complied with laws and regulations that may have a material effect on the
24 financial statements and on major federal assistance programs.

25 3. Perform procedural reviews for all state agencies at times
26 determined by the auditor general. These reviews may include evaluation of
27 administrative and accounting internal controls and reports on such reviews.

28 4. Perform special research requests, special audits and related
29 assignments as designated by the committee and conduct performance audits,
30 special audits, special research requests and investigations of any state
31 agency, whether created by the constitution or otherwise, as may be requested
32 by the committee.

33 5. Annually on or before the fourth Monday of December, prepare a
34 written report to the governor and to the committee which contains a summary
35 of activities for the previous fiscal year.

36 6. In the tenth year and in each fifth year thereafter in which a
37 transportation excise tax is in effect in a county as provided in section
38 42-6104, 42-6106 or 42-6107, conduct a performance audit that:

39 (a) Reviews past expenditures and future planned expenditures of the
40 transportation excise revenues and determines the impact of the expenditures
41 in solving transportation problems within the county and, for a
42 transportation excise tax in effect in a county as provided in section
43 42-6107, determines whether the expenditures of the transportation excise
44 revenues comply with section 28-6392, subsection B.

1 (b) Reviews projects completed to date and projects to be completed
2 during the remaining years in which a transportation excise tax is in effect.
3 Within six months after each review period the auditor general shall present
4 a report to the speaker of the house of representatives and the president of
5 the senate detailing findings and making recommendations. If the parameters
6 of the performance audit are set by the citizens transportation oversight
7 committee, the auditor general shall also present the report to the citizens
8 transportation oversight committee.

9 (c) Reviews, determines, reports and makes recommendations to the
10 speaker of the house of representatives and the president of the senate
11 whether the distribution of highway user revenues complies with title 28,
12 chapter 18, article 2. If the parameters of the performance audit are set by
13 the citizens transportation oversight committee, the auditor general shall
14 also present the report to the citizens transportation oversight committee.

15 7. If requested by the committee, conduct performance audits of
16 counties and incorporated cities and towns receiving highway user revenue
17 fund monies pursuant to title 28, chapter 18, article 2 to determine if the
18 monies are being spent as provided in section 28-6533, subsection B.

19 8. Perform special audits designated pursuant to law if the auditor
20 general determines that there are adequate monies appropriated for the
21 auditor general to complete the audit. If the auditor general determines the
22 appropriated monies are inadequate, the auditor general shall notify the
23 committee.

24 9. Beginning on July 1, 2001, establish a school-wide audit team in
25 the office of the auditor general to conduct performance audits and monitor
26 school districts to determine the percentage of every dollar spent in the
27 classroom by a school district. The performance audits shall determine
28 whether school districts that receive monies from the Arizona structured
29 English immersion fund established by section 15-756.04 and the statewide
30 compensatory instruction fund established by section 15-756.11 are in
31 compliance with title 15, chapter 7, article 3.1. The auditor general shall
32 determine, through random selection, the school districts to be audited each
33 year, subject to review by the joint legislative audit committee. A school
34 district that is subject to an audit pursuant to this paragraph shall notify
35 the auditor general in writing as to whether the school district agrees or
36 disagrees with the findings and recommendations of the audit and whether the
37 school district will implement the findings and recommendations, implement
38 modifications to the findings and recommendations or refuse to implement the
39 findings and recommendations. The school district shall submit to the
40 auditor general a written status report on the implementation of the audit
41 findings and recommendations every six months for two years after an audit
42 conducted pursuant to this paragraph. The auditor general shall review the
43 school district's progress toward implementing the findings and
44 recommendations of the audit every six months after receipt of the district's
45 status report for two years. The auditor general may review a school

1 district's progress beyond this two-year period for recommendations that have
2 not yet been implemented by the school district. The auditor general shall
3 provide a status report of these reviews to the joint legislative audit
4 committee. The school district shall participate in any hearing scheduled
5 during this review period by the joint legislative audit committee or by any
6 other legislative committee designated by the joint legislative audit
7 committee.

8 **10. PERFORM THE DUTIES PRESCRIBED IN SECTION 9-514.01 EITHER DIRECTLY**
9 **OR BY CONTRACT WITH A CERTIFIED PUBLIC ACCOUNTANT.**

10 B. The auditor general may:

11 1. Subject to approval by the committee, adopt rules necessary to
12 administer the duties of the office.

13 2. Hire consultants to conduct the studies required by subsection A,
14 paragraphs 6 and 7 of this section.

15 C. If approved by the committee the auditor general may charge a
16 reasonable fee for the cost of performing audits or providing accounting
17 services for auditing federal funds, special audits or special services
18 requested by political subdivisions of the state. Monies collected pursuant
19 to this subsection shall be deposited in the audit services revolving fund.

20 D. The department of transportation, the board of supervisors of a
21 county that has approved a county transportation excise tax as provided in
22 section 42-6104, 42-6106 or 42-6107 and the governing bodies of counties,
23 cities and towns receiving highway user revenue fund monies shall cooperate
24 with and provide necessary information to the auditor general or the auditor
25 general's consultant.

26 E. The department of transportation shall reimburse the auditor
27 general as follows, and the auditor general shall deposit the reimbursed
28 monies in the audit services revolving fund:

29 1. For the cost of conducting the studies or hiring a consultant to
30 conduct the studies required by subsection A, paragraph 6, subdivisions (a)
31 and (b) of this section, from monies collected pursuant to a county
32 transportation excise tax levied pursuant to section 42-6104, 42-6106 or
33 42-6107.

34 2. For the cost of conducting the studies or hiring a consultant
35 pursuant to subsection A, paragraph 6, subdivision (c) and paragraph 7 of
36 this section, from the Arizona highway user revenue fund.