

House Engrossed Senate Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 298

# **SENATE BILL 1083**

AN ACT

AMENDING SECTIONS 48-589, 48-597, 48-603 AND 48-609, ARIZONA REVISED  
STATUTES; RELATING TO MUNICIPAL IMPROVEMENT DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 48-589, Arizona Revised Statutes, is amended to  
3 read:

4 48-589. Diagrams of property affected; estimate of benefits;  
5 assessment; warrant

6 A. The engineer shall make duplicate diagrams of the property fronting  
7 upon the proposed work or improvement, or contained within the assessment  
8 district when the expenses of the proposed improvement are to be assessed  
9 upon a district. The diagrams shall show each separate lot, numbered  
10 consecutively, the approximate area in square feet of each lot, and the  
11 location of the lot in relation to the work proposed to be done.

12 B. When the diagrams have been approved by the governing body, and the  
13 clerk has certified that fact and the date thereof, the diagrams shall be  
14 delivered to the superintendent of streets.

15 C. At any time after bids have been received for the construction of  
16 the work or the municipality has entered into a contract to purchase an  
17 existing facility, the superintendent shall estimate on the lots fronting on  
18 the work when no district has been established, or, when a district has been  
19 established, upon each of the lots within the district, the benefits arising,  
20 or expected to arise, from the work. The superintendent shall thereupon make  
21 an assessment to cover the sum due for the work performed and specified in  
22 the bid of the person to whom the contract was awarded, including incidental  
23 expenses, and shall assess upon and against the lots the total amount of the  
24 costs and expenses of the work. In so doing the superintendent shall assess  
25 the total sum upon the several lots, each respectively in proportion to the  
26 benefits to be received by each lot.

27 D. When the work has not been declared by the resolution of intention  
28 to be of more than local or ordinary public benefit, and has not been made  
29 assessable upon a district, the lots liable to be assessed for the  
30 improvement shall be those fronting upon the street or streets improved, and  
31 those situated in the quarter blocks and irregular blocks adjoining and  
32 cornering upon the crossings, or where there is a termination in the two  
33 quarter blocks adjoining and cornering thereon, halfway to the next main  
34 street crossing and all the way to a boundary line of the municipality when  
35 no cross street intervenes.

36 E. The assessment shall cover the sum due for the work performed or to  
37 be performed as specified in the bid of the person to whom the contract may  
38 be awarded, and shall also include incidental expenses. The incidental  
39 expenses shall include the compensation of the city or town engineer for work  
40 done by him, the cost of printing, advertising and posting, the compensation  
41 of the person appointed by the superintendent to take charge of and  
42 superintend the work of constructing the improvements and the expenses of  
43 making the assessment, interest on the bonds for a period not longer than the  
44 expected period of construction and six months beyond and all legal and  
45 financial fees, expenses and costs incurred in drafting the proceedings and

1 in the sale of the bonds. The amount of incidental expenses shall be settled  
2 and allowed by the superintendent upon verified itemized bills. IF DEEMED  
3 NECESSARY BY THE GOVERNING BOARD, A RESERVE FUND AND ADDITIONAL, SIMILAR  
4 FUNDS MAY BE ESTABLISHED EITHER WITH PROCEEDS FROM THE SALE OF THE BONDS AND  
5 THAT WILL BE COVERED BY THE ASSESSMENT OR BY INCREASING THE COLLECTIONS OF  
6 THE ANNUAL INSTALLMENTS OF PRINCIPAL, OVER AND ABOVE THE AMOUNTS REQUIRED TO  
7 PAY MATURING PRINCIPAL ON THE BONDS. THE MONIES IN THOSE FUNDS MAY BE USED  
8 ONLY TO CURE DEFICITS IN THE PRINCIPAL AND INTEREST FUNDS OR TO PAY INTEREST  
9 AND PRINCIPAL ON THE FINAL MATURITY OR MATURITIES OF THE BONDS.

10 F. The assessment shall briefly refer to the award of the contract or  
11 to the contract if it has then been executed and shall name the person to  
12 whom the contract has been awarded and such person's surety, and the amount  
13 to be paid therefor as stated in the winning bid or as finally computed by  
14 the engineer, if the assessment is not made until the work is completed,  
15 together with the incidental expenses, the amount of each assessment, the  
16 name of the owner of each lot, if known, and if unknown the word "unknown"  
17 shall be written opposite the number of the assessment, together with the  
18 amount assessed thereon. The superintendent of streets shall list the names  
19 of owners as shown on the most recently certified property tax assessment  
20 roll and any other person of whom the superintendent has personal knowledge  
21 that such other person may be the owner of the respective lot. The  
22 assessments upon the lots assessed shall be consecutively numbered, and the  
23 diagram shall be numbered to correspond with the numbers of the assessments.

24 G. There shall be attached to the assessment a warrant signed by the  
25 superintendent and countersigned by the mayor, which shall be substantially  
26 in the following form: "By virtue hereof, I (name of superintendent of  
27 streets), of the (name of municipality and county), and state of Arizona, by  
28 virtue of the authority vested in me as said superintendent of streets, do  
29 authorize and empower (name of contractor or the municipality, if the  
30 municipality elects to sell the bonds instead of delivering the bonds to the  
31 contractor), or the contractor's agents or assigns, to demand and receive the  
32 several assessments upon the assessment hereto attached, and this shall be  
33 the contractor's warrant for the same."

34 H. The warrant and assessment shall be recorded in the office of the  
35 superintendent not earlier than the date of execution of the construction  
36 contract and one diagram shall be there filed. When so recorded, the several  
37 amounts assessed shall be a first lien on the lots assessed subject only to  
38 the lien for general property taxes and prior special assessments for a  
39 period terminating on the date the assessment against the respective lot is  
40 paid in full, and such recording shall be notice to all persons interested of  
41 the contents of the record.

42 I. FOR A COMMUNITY FACILITIES DISTRICT AND IN COMPLIANCE WITH SECTION  
43 48-721, SUBSECTION A, AFTER ADOPTION BY THE DISTRICT BOARD OF A RESOLUTION  
44 THAT LEVIES A SPECIAL ASSESSMENT ON PROPERTY IN THE DISTRICT FOR A PUBLIC  
45 INFRASTRUCTURE PURPOSE PURSUANT TO SECTION 48-709, SUBSECTION A BUT BEFORE

1 THE ISSUANCE OF SPECIAL ASSESSMENT BONDS, THE DISTRICT MAY ENTER INTO A  
2 WRITTEN AGREEMENT WITH A LANDOWNER AS TO THE MANNER IN WHICH THE ASSESSMENT  
3 IS TO BE ALLOCATED IF THE LAND IS TO BE DIVIDED INTO MORE THAN ONE PARCEL.  
4 BASED ON THAT AGREEMENT, THE DISTRICT MAY PROVIDE THAT THE COLLECTION OF  
5 INSTALLMENTS OF ASSESSMENTS BE PAID TO THAT LANDOWNER FOR THE COSTS OF PUBLIC  
6 INFRASTRUCTURE PURPOSES ON THE SAME BASIS THAT PAYMENTS WOULD BE MADE ON  
7 BONDS, UNTIL THE DISTRICT BOARD DETERMINES, IF EVER, THAT BONDS SHOULD BE  
8 ISSUED. UNTIL BONDS ARE ISSUED, ASSESSMENTS MAY BEAR INTEREST AT THE RATE  
9 SPECIFIED BY THE DISTRICT BOARD IN THE WRITTEN AGREEMENT. INSTALLMENTS ON  
10 ASSESSMENTS OR PRINCIPAL THAT ARE PAID TO THE LANDOWNER SHALL BE CREDITED  
11 AGAINST THE COSTS OF PUBLIC INFRASTRUCTURE PURPOSES, INCLUDING INCIDENTAL  
12 EXPENSES AS PROVIDED IN THE WRITTEN AGREEMENT.

13 Sec. 2. Section 48-597, Arizona Revised Statutes, is amended to read:  
14 48-597. List of unpaid assessments; issuance of bonds;  
15 denominations; due date

16 A. After the return of the warrant, and after recording the return,  
17 the superintendent shall make and certify to the clerk a complete list of all  
18 assessments unpaid, which amount to twenty-five dollars or over, upon any  
19 assessment.

20 B. If any person before certification of the list to the clerk  
21 presents to the superintendent an affidavit that the person owns a lot in the  
22 list, accompanied by the certificate of a searcher of records that the person  
23 is the owner of record, and notifies the superintendent in writing that the  
24 person desires no bond to be issued for the assessment upon the lot, then the  
25 assessment shall not be included in the list, and shall remain collectible as  
26 provided by this article. Omission to file the notice shall bar any defense  
27 against the bonds except the defense that the governing body did not have  
28 authority to issue the bonds.

29 C. The clerk shall present the list to the governing body at its next  
30 meeting after the return has been recorded. At any time after awarding a  
31 contract for construction or acquisition, the governing body may, by  
32 resolution, direct improvement bonds to be issued in an amount which shall  
33 not exceed the amount of unpaid assessments exceeding twenty-five dollars as  
34 may be shown on the certified list. The resolution shall prescribe the  
35 maximum number and denomination of the bonds, and the times when payable,  
36 which shall be so fixed that an approximately equal amount of principal shall  
37 be paid each year or any approximately equal aggregate amount of principal  
38 and interest shall be paid each year until the whole amount is paid. The  
39 bonds shall mature in a period which shall not exceed twenty-five years and  
40 three months from the date of the bonds. The denominations of the bonds shall  
41 be fixed by the governing body. The governing body may provide in the form  
42 of bond for redemption prior to maturity upon the giving of such notice as  
43 the governing body determines to be reasonable and for the payment of a  
44 premium at redemption if the governing body determines the premium to be  
45 advisable. The resolution shall also fix the place, if any, other than the

1 office of the treasurer, at which the bonds and the interest shall be  
2 payable.

3 D. The bonds shall be issued as of the date determined by the  
4 governing body, and shall bear interest from such date at the ~~rate~~ RATES  
5 specified in the resolution, payable semiannually beginning on January 1 or  
6 July 1, as the case may be, occurring no earlier than ninety days after the  
7 later of the date of the bond or the expected completion of the work, and  
8 shall be for the interest accrued at that time.

9 E. The due date of all bonds shall be January 1 in the years in which  
10 they respectively become due.

11 F. The city shall have the option to sell the bonds at public or  
12 private sale or by an on-line bidding process, at a price not below par and  
13 accrued interest to the date of payment, and at an interest rate not in  
14 excess of the maximum rate set in the resolution of intention. In the event  
15 the bonds are not sold by the city they shall be delivered to the contractor  
16 for the amount of the assessments remaining unpaid and the bonds shall bear  
17 interest at the maximum interest rate set forth in the resolution or  
18 ordinance of intention.

19 G. If the bonds are sold before the work or acquisition is completed,  
20 the proceeds from the sale of the bonds shall be placed in a special fund to  
21 be held by the treasurer and to be used for payment of incidental expenses  
22 and payments for construction or acquisition. Proceeds from the sale of the  
23 bonds shall be used for the acquisition mentioned in the resolution of  
24 intention or to make semimonthly or monthly payments to the contractor upon a  
25 basis of ninety per cent of the value of the work actually performed as  
26 estimated by the superintendent or engineer employed for such purposes to and  
27 including the fifteenth or last day of each calendar month. The balance  
28 shall be paid after the governing body has approved the assessment after the  
29 hearing. Pending use of the bond proceeds, the treasurer may invest the  
30 proceeds in any investments for which sinking funds of this state may be  
31 invested. Notwithstanding the foregoing, if bond anticipation notes have  
32 been issued, the bond proceeds, or so much as is necessary, shall be used to  
33 redeem such notes.

34 H. THE CITY AND THE COUNTY TREASURER FOR THE COUNTY IN WHICH THE CITY  
35 IS LOCATED MAY ENTER INTO AN AGREEMENT FOR THE COUNTY TREASURER TO COLLECT  
36 THE ASSESSMENTS IN THE MANNER AND BY THE OFFICERS PROVIDED BY LAW FOR THE  
37 COLLECTION AND ENFORCEMENT OF GENERAL TAXES. THE CITY AND THE COUNTY  
38 TREASURER MAY PROVIDE BY AGREEMENT FOR THE PAYMENT OF THE COUNTY TREASURER'S  
39 COLLECTION EXPENSES THAT ARE DIRECTLY RELATED TO THE LEVY OF THE ASSESSMENT  
40 AND, IF SO PROVIDED, THE LEVY OF THE ASSESSMENT MAY INCLUDE AN AMOUNT FOR  
41 COMPENSATION OF THE COUNTY TREASURER'S EXPENSES DIRECTLY RELATED TO THE  
42 COLLECTION OF THE ASSESSMENT. SECTION 11-496 APPLIES TO THE COMPENSATION  
43 RECEIVED BY THE COUNTY TREASURER PURSUANT TO THE AGREEMENT.

1           Sec. 3. Section 48-603, Arizona Revised Statutes, is amended to read:  
2           48-603. Sale procedure; municipality as purchaser; disposition  
3                         of property by municipality

4           A. On the day fixed for the sale, the superintendent shall, at 10:00  
5 a.m., or at any time thereafter to which the sale may be adjourned, begin the  
6 sale of the property advertised, commencing at the head of the list and  
7 continuing in the numerical order of lots, until all are sold. The  
8 superintendent may postpone or continue the sale from day to day until all  
9 the property is sold. Each lot separately assessed shall be offered for sale  
10 separately. The sale shall be for the entire assessment including the  
11 delinquent installments, and the person who will take the least quantity of  
12 land and then and there pay the amount of the assessment, penalty and costs  
13 due, including fifty cents to the superintendent for a certificate of sale,  
14 shall become the purchaser.

15           B. The municipality may provide by ordinance that if there is no  
16 purchaser other than the municipality who will pay the entire amount of the  
17 assessment, penalty and costs, including fifty cents to the superintendent  
18 for a certificate of sale, the superintendent shall sell the lot or portion  
19 of the lot to the person who will take the least quantity of land and then  
20 and there pay the amount of the assessment then delinquent, including  
21 interest, penalty and costs due, and fifty cents to the superintendent for a  
22 certificate of sale, and deed shall issue to the purchaser, subject to  
23 redemption, as provided by this article. The municipality may also provide  
24 by ordinance that the lien on the entire lot, piece or parcel of land  
25 assessed shall continue to be in effect for the amount of the assessment or  
26 portion thereof, including interest, penalties and costs, thereafter to  
27 become due, and the land may again be sold should the assessment again become  
28 delinquent. When so provided by ordinance such fact shall be stated in the  
29 notice of sale and the superintendent shall comply with the provisions.

30           C. If there is no purchaser for any lot offered for sale, it shall be  
31 struck off to the municipality as the purchaser, and the governing body shall  
32 appropriate FIRST FROM ANY RESERVE AND ANY ADDITIONAL, SIMILAR FUND AND THEN  
33 from the general fund of the treasury the amount bid for such purpose, and  
34 shall order the treasurer to place the amount in a special fund for such  
35 improvement. The governing body, however, may direct the treasurer to pay  
36 into the special fund only the sum required to pay the installment then due  
37 or to become due upon the bonds issued for the assessment, and thereupon the  
38 municipality shall become obligated to pay FIRST FROM ANY RESERVE AND ANY  
39 ADDITIONAL, SIMILAR FUND AND THEN from the general fund the succeeding  
40 installments and interest on the bonds, as are payable by the assessments on  
41 the lot. Thereafter the lien of the assessment shall not be extinguished for  
42 nonpayment of general taxes or prior special assessments, and the annual  
43 installments of principal and interest of the assessment shall constitute a  
44 first lien on the respective lot, piece or parcel of land, coequal with the  
45 lien for general taxes. If the lien has not been extinguished prior to the

1 property being stricken off to the state, such lien shall extinguish upon  
2 sale of the property pursuant to title 42, chapter 18, article 7 and the  
3 municipality shall share pro rata in the proceeds of such sale to the extent  
4 of the delinquent assessments.

5 D. The municipality may sell any lot so purchased after the expiration  
6 of the time for redemption at public or private sale. All sums received by  
7 the municipality from redemption of property purchased by it and from sale by  
8 it of property so purchased, less the amount paid into the special fund FIRST  
9 FROM ANY RESERVE AND ANY ADDITIONAL, SIMILAR FUND AND THEN from the general  
10 fund, shall be paid into the special fund for the payment of the bonds until  
11 the special fund is sufficient to pay all outstanding bonds. If the  
12 municipality has provided that the installment of principal and interest may  
13 be paid in partial payments prior to the time each of the installments  
14 becomes due, and the owner of the property against which the installment of  
15 principal and interest has become delinquent has paid in to the  
16 superintendent partial payments on the installments, ~~that~~ the owner of the  
17 property advertised for sale shall have the right to pay the balance due on  
18 the annual installments of principal and interest plus penalties and costs,  
19 and no sale shall be held on the parcel of land.

20 E. The superintendent shall record the date of the payment and mark  
21 the installment of principal or interest paid. In the event the owner does  
22 not pay the balance due on the installment of principal or interest, and the  
23 property is sold for the full amount of the assessment, the superintendent  
24 shall refund to the owner all money received from the owner by way of partial  
25 payments.

26 Sec. 4. Section 48-609, Arizona Revised Statutes, is amended to read:  
27 48-609. Deficiency in collections

28 If there is a deficiency in the funds collected from the special  
29 assessments by reason of the inadequacy of the method of collection adopted  
30 by the municipality under section 48-608, the municipality shall make good  
31 the deficiency, reimbursing itself from the funds collected from the  
32 installments when they are received. If such method has not been adopted AND  
33 THE DEFICIENCY HAS NOT BEEN FUNDED BY MONIES FROM A RESERVE, the municipality  
34 may, but is not so obligated, make good the deficiency by a temporary loan  
35 FIRST FROM ANY RESERVE AND ANY ADDITIONAL, SIMILAR FUND AND THEN from ~~some~~  
36 ~~other~~ THE GENERAL fund.

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.

Passed the House April 28, 2010,

by the following vote: 50 Ayes,

7 Nays, 3 Not Voting

Tom B. Jordan  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House  
*Pro Tempore*

Passed the Senate February 22, 2010,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

Robert L. Bunn  
President of the Senate

Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1083

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 29, 20 10

by the following vote: 19 Ayes,

9 Nays, 2 Not Voting

Robert L. Brown  
President of the Senate

Charmain Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

29 day of April, 20 10

at 4:45 o'clock P. M.

Michelle Bondie  
Secretary to the Governor

Approved this 10 day of

May, 2010

at 11:00 o'clock A. M.

Janice K. Brewer  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 10<sup>th</sup> day of May, 20 10

at 4:10 o'clock P. M.

Ken Blum  
Secretary of State