

THE APPARENT PROBLEM:

After the 1986 summer convention of the Michigan Association of County Drain Commissioners, an Ad Hoc Committee on Insurance and Contractor Bonding was formed to address some of the issues raised at the convention. The committee was composed of drain commissioners, contractors, insurance representatives, state legislators, and lawyers. The committee dealt primarily with issues involving contractor bonding, in particular with the recurrent problems drain commissioners have had in collecting against bonds from corporate surety companies and with opening the competitive market to smaller contractors who have problems meeting the present bonding requirements. The committee recommended that amendments be made to the Drain Code that would address these issues, and legislation has been introduced that would implement the committee's recommendations.

THE CONTENT OF THE BILL:

The Drain Code requires, among other things, that a successful bidder on a drain job file with the county drain commissioner a surety bond to be used as security against the contractor's promise to finish the job as specified in the contract.

The bill would amend the code to strike the present language regarding surety bonds and instead would require successful bidders for drain contracts of over \$100,000 to submit security in various forms, as decided by the drain commissioner. If the contract were not completed according to its written terms, the security would be used to complete the contract.

Forms of security. The county drain commissioner could require the security to be in one or more of the following forms:

- cash or certified check;
- a performance bond executed by a state-licensed insurance company;
- an escrow agreement acceptable to the commissioner;
- an irrevocable letter of credit issued by a state- or federally-regulated financial institution; or
- "personal surety" (co-signer) acceptable to the commissioner.

Personal surety. A personal surety (co-signer) would be subject to all of the following conditions:

- (a) The co-signer would have to be an experienced contractor, able to perform and complete the contract on time if the successful bidder defaulted on the contract.
- (b) A co-signer could not act as a personal surety for more than one other principal contractor during the contract term for which he or she was giving security.
- (c) A contract could not specify more than two co-signers as security on any single job.

(d) The co-signer would have to provide financial information requested by the commissioner, which satisfied the commissioner that the co-signer was capable of performing the specified contract.

(e) The co-signer would have to give the commissioner a list of all contracts for which he or she had already contracted as primary contractor, naming the parties, amounts, work to be performed, and scheduled dates of the contracts; if conflicts arose between these contracts and the contract under which the co-signer was acting as personal surety, the co-signer would have to schedule his or her list of primary contracts around the job for which he or she had contracted as security.

(f) Finally, should the successful bidder default on a contract, the co-signer would have to either complete the project (as specified in the original contract) within the time limits specified by the commissioner, or pay to the drainage district the amount necessary to pay another contractor to complete the contract, as determined by the commissioner.

The bill would apply to all contracts exceeding \$100,000. For contracts less than or equal to \$100,000, the commissioner could require security that he or she considered necessary, consistent with provisions in the bill. The commissioner, at his or her discretion, could require that additional types of bonds or security be used.

Indemnity insurance. In addition to the security required for drain contracts, successful bidders would have to continue to furnish a bond or indemnity insurance (for an amount to be set by the drain commissioner) to indemnify the commissioner, the drainage district, and the county (or other municipality) against loss or damage resulting either from injury to any workers on the job or from the negligence or carelessness of the contractor in building the drain.

MCL 280.223

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Although further legislation to facilitate collection against a corporate surety may eventually be needed, by allowing contractors to use co-signers as sureties on drain projects, the bill may reduce the recurrent problems drain commissioners have had in collecting against bonds from corporate surety companies. The bill also would provide the means to design a drain project with bonding limits, which would open the competitive market to smaller contractors who presently cannot otherwise qualify for projects because of onerous bonding requirements, and could also result in reduced project costs.

POSITIONS:

There are no positions on the bill.