



**House  
Legislative  
Analysis  
Section**

Washington Square Building, Suite 1025  
Lansing, Michigan 48909  
Phone: 517/373-6466

**SECURITY FOR DRAIN JOBS**

**RECEIVED**

**MAY 23 1989**

House Bill 4456

Sponsor: Rep. Dick Allen

Committee: Towns and Counties

Complete to 3-31-89

**A SUMMARY OF HOUSE BILL 4456 AS INTRODUCED 3-16-89**

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 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" acceptable to the commissioner.

Personal surety. A personal surety would be subject to all of the following conditions:

(a) The personal surety 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 personal surety could not act as such 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 personal sureties as security on any single job.

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

(e) The personal surety 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 contractor was acting as personal surety, the personal surety 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 personal surety 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