

# HOUSE BILL No. 4456

March 16, 1989, Introduced by Reps. Allen, DeMars, Bartnik, Knight, Hickner, Weeks, Ouwinga, Gnodtke, Miller, London, Van Singel and Muxlow and referred to the Committee on Towns and Counties.

A bill to amend section 223 of Act No. 40 of the Public Acts of 1956, entitled as amended

"The drain code of 1956,"

being section 280.223 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 223 of Act No. 40 of the Public Acts of  
2 1956, being section 280.223 of the Michigan Compiled Laws, is  
3 amended to read as follows:

4 Sec. 223. (1) A DEPOSIT IN THE FORM OF A certified check or  
5 its equivalent in ~~such~~ THE amount ~~as~~ THAT the commissioner  
6 ~~may deem~~ CONSIDERS reasonable may be required with each bid,  
7 whether on opening bidding or sealed proposals, as evidence of  
8 good faith and to reimburse the district in the event of failure  
9 on the part of the successful bidder to execute the necessary  
10 contracts or to furnish the required ~~bond~~ SECURITY or indemnity

1 insurance. ~~In case~~ IF the successful bidder ~~shall~~ DOES not  
2 execute the proper contracts or furnish the ~~bonds~~ SECURITY or  
3 indemnity insurance required ~~by~~ OF him OR HER within 10 days  
4 after the acceptance of his OR HER bid, then the commissioner may  
5 retain ~~such~~ THE deposit as stipulated damages for the nonexecu-  
6 tion of the contract and proceed to advertise for and let the job  
7 anew. If the successful bidder furnishes the ~~bonds~~ SECURITY or  
8 indemnity insurance required and executes the required contracts,  
9 then ~~such~~ THE deposit shall be returned to him OR HER. All  
10 ~~moneys so~~ MONEY forfeited TO THE COMMISSIONER UNDER THIS  
11 SUBSECTION shall be deposited with the county treasurer to the  
12 credit of ~~such~~ THE drainage district fund.

13 (2) The successful bidder shall, within the time ~~above~~  
14 ~~limited~~ STATED IN SUBSECTION (!), file with the commissioner ~~a~~  
15 ~~surety bond, conditioned for the faithful performance of said~~  
16 SECURITY CONSIDERED NECESSARY BY THE COMMISSIONER GUARANTEEING  
17 THAT THE CONTRACT WILL BE COMPLETED IN ACCORDANCE WITH THE TERMS  
18 SPECIFIED IN THE contract. ~~Such bond~~ THE SECURITY shall be in  
19 a sum ~~to be~~ fixed by the commissioner, but shall ~~in no case~~  
20 NOT be less than the contract price. ~~The~~ AT THE OPTION OF THE  
21 COMMISSIONER, THE SECURITY SHALL CONSIST OF 1 OR MORE OF THE  
22 FOLLOWING:

23 (A) CASH.

24 (B) CERTIFIED CHECK.

25 (C) PERFORMANCE BOND EXECUTED BY A SURETY COMPANY AUTHORIZED  
26 TO DO BUSINESS IN THIS STATE.

1 (D) ESCROW AGREEMENT ACCEPTABLE TO THE COMMISSIONER.

2 (E) IRREVOCABLE LETTER OF CREDIT ISSUED BY A STATE OR  
3 FEDERALLY REGULATED FINANCIAL INSTITUTION.

4 (F) PERSONAL SURETY ACCEPTABLE TO THE COMMISSIONER.

5 (3) IF A PERSONAL SURETY IS USED AS SECURITY, THE COMMIS-  
6 SIONER SHALL REQUIRE ALL OF THE FOLLOWING CONDITIONS AND  
7 LIMITATIONS:

8 (A) THAT THE PERSONAL SURETY BE A CONTRACTOR WITH THE  
9 EXPERIENCE AND ABILITY TO PERFORM AND COMPLETE, IN A TIMELY  
10 MANNER, THE CONTRACT IN THE EVENT OF A DEFAULT BY THE SUCCESSFUL  
11 BIDDER.

12 (B) THAT THE PERSONAL SURETY NOT ACT AS THE PERSONAL SURETY  
13 FOR MORE THAN 1 OTHER PRINCIPAL DURING THE TERM OF THE CONTRACT  
14 UPON WHICH HE OR SHE IS GIVING SECURITY.

15 (C) THAT NO MORE THAN 2 PERSONAL SURETIES BE UTILIZED AS  
16 SECURITY ON ANY 1 CONTRACT.

17 (D) THAT, THE PERSONAL SURETY PROVIDE FINANCIAL INFORMATION  
18 REQUESTED BY THE COMMISSIONER AND THAT, AFTER A REVIEW OF THIS  
19 INFORMATION, THE COMMISSIONER BE SATISFIED WITH THE SURETY'S  
20 ABILITY TO PERFORM THE CONTRACT UPON WHICH HE OR SHE IS GIVING  
21 SECURITY.

22 (E) THAT THE PERSONAL SURETY PROVIDE TO THE COMMISSIONER A  
23 LIST OF CONTRACTS UPON WHICH THE SURETY IS REQUIRED TO PERFORM,  
24 NAMING THE PARTIES TO EACH CONTRACT, THE AMOUNT OF EACH CONTRACT,  
25 THE WORK TO BE PERFORMED UNDER EACH CONTRACT AND THE TIME DURING  
26 WHICH EACH CONTRACT IS TO BE PERFORMED, AND THAT THE PERSONAL  
27 SURETY REVISE THIS LISTING DURING THE TERM OF THE CONTRACT UPON

1 WHICH HE OR SHE IS GIVING SECURITY, ADDING OR DELETING  
2 INFORMATION AS CONTRACTS ARE ENTERED OR COMPLETED.

3 (F) THAT THE PERSONAL SURETY AGREE THAT IN THE EVENT THE  
4 SUCCESSFUL BIDDER DEFAULTS ON THE CONTRACT, THE PERSONAL SURETY  
5 SHALL ENTER ONTO THE PROJECT AND COMPLETE THE PROJECT PURSUANT TO  
6 THE TERMS OF THE CONTRACT WITHIN THE TIME LIMITATIONS SPECIFIED  
7 BY THE COMMISSIONER OR PAY TO THE DRAINAGE DISTRICT THE AMOUNT OF  
8 MONEY SPECIFIED BY THE COMMISSIONER AS NECESSARY TO PAY ANOTHER  
9 CONTRACTOR TO COMPLETE THE CONTRACT.

10 (4) IF A CONTRACT IS NOT COMPLETED IN ACCORDANCE WITH ITS  
11 WRITTEN TERMS, THE SECURITY PROVIDED TO THE COMMISSIONER SHALL BE  
12 USED TO COMPLETE THE CONTRACT.

13 (5) IN ADDITION TO THE SECURITY REQUIRED IN SUBSECTION (2),  
14 THE commissioner shall require the successful bidder ~~in any~~  
15 ~~case~~ to furnish a bond or indemnity insurance in ~~such~~ THE sum  
16 ~~as~~ REQUIRED BY the commissioner. ~~may require and to be~~  
17 ~~approved by him, which said~~ THIS bond or indemnity insurance  
18 shall run to the people of the state of Michigan and shall be  
19 maintained in full force and effect until ~~such~~ THE contract is  
20 terminated to indemnify the ~~drain~~ commissioner, THE drainage  
21 district, AND THE county or other municipality ~~by reason of any~~  
22 AGAINST LOSS OR DAMAGE RESULTING FROM injury to ~~any workman~~ A  
23 WORKER on ~~said~~ THE drain, or ~~against any loss or damage by~~  
24 ~~reason of~~ the negligence or carelessness of ~~said~~ THE contrac-  
25 tor in the construction of ~~said~~ THE drain. Indemnity insurance  
26 ~~which shall terminate~~ THAT TERMINATES by expiration or  
27 cancellation shall be replaced prior to termination in ~~such~~ THE

1 sum ~~as~~ THEN REQUIRED BY the commissioner. ~~shall then~~  
2 ~~require.~~

3 (6) THE PROVISIONS OF THIS SECTION APPLY TO CONTRACTS IN  
4 EXCESS OF \$100,000.00. FOR ALL CONTRACTS EQUAL TO OR LESS THAN  
5 \$100,000.00, THE COMMISSIONER MAY REQUIRE SECURITY THAT HE OR SHE  
6 CONSIDERS ADEQUATE AND NECESSARY, CONSISTENT WITH THE PROVISIONS  
7 OF THIS SECTION.

8 (7) THE COMMISSIONER, AT HIS OR HER OPTION, MAY REQUIRE THE  
9 PROVISION OF ADDITIONAL KINDS OF SECURITY.