

REMARKS TO THE
SENATE LOCAL GOVERNMENT COMMITTEE
MONTANA LEGISLATURE

Thursday, February 15, 2005, 3:00 p.m.

Mr. Chairman and ladies and gentlemen of the committee:

My name is Gary Marks. I am the city manager of the City of Whitefish.

I am here today to express the Whitefish City Council's support, and my personal support, for Senate Bill 237.

Senate Bill 237 seeks to allow units of Montana government to consider proposed fees when evaluating and selecting professional architects, engineers and surveyors.

Statutory procedures currently provided in MCA 18-8-204 limit governmental units to negotiating a fee for services only after an architect, engineer or surveyor has been selected – assuring that government will NOT be able to consider the competitive fees from all professionals vying for the government project.

Please understand the issue here. Although our opponents will claim otherwise, the bill does not make the low bidder the king in the evaluation and selection of architects, engineers and surveyors. They will call this bill a "low-bidder" bill. But, it is not. It only seeks to allow state and local governments to consider proposed fees as an element along with the six other selection criteria, as prescribed in MCA 18-8-204(2)(b), when evaluating and selecting architects, engineers and surveyors. These existing criteria are (1) The qualifications of professional personnel to be assigned to the project, (2) capability to meet time and project budget requirements, (3) location, (4) present and projected workloads, (5) related experience on similar projects, and (6) recent and current work for the agency. The bill does not change any of these quality-based criteria.

Under the selection process envisioned by SB237, governments would be free to decide whether or not they want to include competitive fee comparisons. It would be a choice; not a requirement. Consultants who would prevail in selection processes where local governments elect to consider fees would be those consultants who offer the most attractive combination of (1) the qualifications of professional personnel to be assigned to the project, (2) capability to meet time and project budget requirements, (3) location, (4) present and projected workloads, (5) related experience on similar projects, (6) recent and current work for the agency, and – this would be new – (7) the proposed fees. Please notice from this list that fees would not stand by themselves governing the selection process. To the contrary, they would be considered along with the six other criteria currently in the law.

Please don't let anyone tell you that consideration of fees for architects, engineers and surveyors will lead to lesser quality public projects. All of the quality-based criteria will still be part of the selection process. Surely, private sector developers ask for proposed fees up front, consider such information and then make sound decisions that address both quality and the financial bottom line. The same should be true of government. As one who's career is in public sector management, I often hear the statement that government should be run more like business. Well, here is a great opportunity to make a change that will allow government to utilize an essential tool of the market-based economy – competition – while still keeping quality-based criteria as major considerations in the selection process.

The opponents that will follow me to this podium will probably tell you that a lack of defined scopes of work on local government projects will make it difficult to provide an accurate fee quote as part of satisfying the overall consultant selection criteria for local government projects. Their solution will likely be the status quo – forbid competitive consideration of proposed fees. However, there exists a tried and proved method wherein quality-based criteria and consideration of proposed fees can be used in the same process.

The first eight years of my career as a city manager were spent in Oregon where local governments were allowed to consider fees for

architects, engineers and surveyors as part of a competitive and quality-based selection process. I managed a small rural city of 1,500 people that did not have a professional engineer on staff. When we undertook an infrastructure project that required professional engineering services we simply contracted with an engineer to first prepare a detailed scope of work which defined our project in professional terms. We then used that professionally-prepared scope of work as part of our consultant selection process for the larger project – where consideration of fees was a factor. In my City the consideration of fees did not usually account for more than 25 percent of the overall assessment score in our selection process. The remaining 75 percent or more was usually utilized for non-fee related criteria. With the professionally-prepared scope of work all interested consultants had the information they needed to provide accurate fee quotes and to understand the overall project. I do not believe this process was part of Oregon law, but many local governments used it in various forms because it made sense and it supported the consultants' need to understand the project. I think it would make sense for Montana too.

Our opponents will also likely tell you that competitive consideration of fees will lead to inferior designs and they will probably tell you the result will be horror stories of projects gone terribly wrong. I can tell you that after many years of competitive fee comparison in Oregon there was absolutely no evidence that public facilities were suffering a quality gap in that state. I know. I was there. I personally oversaw the administration of numerous professional services contracts that resulted from selection processes that considered fees. The professionals I dealt with were just that – professional. And, the projects they helped shape were – and still are – top-notch, quality public facilities. The only difference between Oregon and Montana is that in Oregon the governments I served could provide a higher level of accountability and transparency to their taxpayers through the time-tested mechanism of competitive fee comparison.

Our opponents may tell you that the system is not broken, so you don't need to fix it. Well, I guess we can understand their perspective. They currently enjoy doing business with Montana local governments in an environment exempt from fee-based competition. What business wouldn't like to have the law insulate them from price

competition? For a business, that is a great position to be in. However, when the law prevents local government officials from knowing if the costs of vital professional services is in line with the marketplace – then I must submit to you that the system is indeed broken.

Let's also remember that well over 80 percent of Montana cities have populations of less than 5,000 people and tax bases of proportionate size. They simply cannot afford, and do not have, professionals on their side of the negotiating table to help evaluate the after-the-selection fee negotiations. Many times it is the City Council itself – made up of an assortment of community folks from various walks of life – that must represent their communities in fee negotiations. Many times these individuals lack the background to truly understand whether the fee demand of a selected professional is in line or not. While no one should ever pay more than a fair price, it is the smaller cities and counties of Montana that can least afford to do so. Giving Montana's local government entities the advantage of competitive fee comparison, as a factor in their overall evaluation processes, would surely go a long way in introducing financial transparency to such processes, assuring that both quality and financial requirements are evaluated within a competitive environment in relation to public projects.

Cities, towns and counties from throughout Montana stand in support of this bill. I am now presenting you with a compilation of documents of support from 29 cities and towns and six counties. They all are asking the Montana Legislature – they are asking you – to give them an additional tool to help them better manage the public funds entrusted to them.

Montana taxpayers are demanding transparency, efficiency and accountability in government – as well they should. Senate Bill 237 provides an important change and move in that direction.

On behalf of the City of Whitefish, I respectfully ask for the committee's support for this important legislation. Thank you.