

# 2008 – 2010 ACEC WI Government Affairs Strategies

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### Introductory Section

Consulting engineers play essential roles in enhancing Wisconsin’s economic development and the quality of life for its citizens. From designing the infrastructure vital to a healthy business climate to developing ways to clean up and protect the environment, consulting engineers are at the forefront.

The American Council of Engineering Companies of Wisconsin (ACEC WI) is the business voice of the Wisconsin consulting engineering industry. Founded in 1958, it represents more than 65 firms that employ over 4,000 engineers, architects, planners, geologists, soil scientists, and other highly educated, experienced professionals. ACEC WI monitors legislative, regulatory, and legal issues as they impact Wisconsin’s economic development both today and into the future. Its agenda is focused on the continued protection of the health, safety, and welfare of the people of Wisconsin.

Like many states, Wisconsin has faced significant budget challenges in recent years. However, by working with ACEC WI and other key groups, the state continues to deliver many critical infrastructure projects.

The industry's work is a driving force in Wisconsin's economic development. Consulting engineers provide professional services to all levels of government, as well as to business and industrial enterprises. ACEC WI member firms are involved in designing and overseeing a majority of the construction and renovation projects in the state, from bridges, buildings, and parking structures to water treatment plants and energy-efficient generation and distribution systems. We design ventilation and electrical systems for hospitals. We plan, design, and assist in building roadways to reduce congestion and improve safety while being friendly to the environment and sensitive to community needs. We design and renovate public water systems for communities of all sizes. We also address environmental and ecological issues associated with wetlands, brownfields, and hazardous waste disposal all these are in support of sustainability.

ACEC WI members strive to employ the best-trained and educated individuals possible. As Wisconsin residents and business owners, our member firms have a vested interest in retaining their workforce in Wisconsin, benefiting the state and ensuring projects are delivered in a timely and efficient manner. Most importantly, as Wisconsin citizens, ACEC WI members have an interest in helping provide the resources and tools needed to make our state the best that it can be. We encourage the use of Wisconsin firms to retain our highly skilled talent pool, grow family-supporting jobs, and keep Wisconsin taxpayer funds in the state.

## **Areas of Interest**

### **State Budget**

ACEC WI member firms understand the budget challenges facing the State of Wisconsin and local governments. We support responsible spending and tax policies. At the same time we recognize needed public infrastructure projects are a key component of what that drives our state's economy. Tax cutting proposals that will cripple the ability of state and local governments to provide needed public services and infrastructure for communities may have unintended and far reaching negative results.

Some states place a greater emphasis on user fees as a funding source for transportation and many other infrastructure programs, while maintaining a lower tax rate. Because Wisconsin has a reputation as a high tax state, most budget solutions have focused on holding the line on tax increases while ignoring the impact of lower user fees. For example, highway users in Wisconsin pay less in total user fees and gasoline taxes combined than do those in any surrounding state and have an average total burden when compared to the nation as a whole.

Public opinion surveys tend to show a majority of the public is willing to make needed investments if confident the taxes or fees will actually go for their intended purpose, highway improvements and other infrastructure needs.

Future reductions in federal grant monies for economic development (HUD) will require an increase in a community's local share for economic development projects. The proposed restriction on TIF, user charge, and fee revenues would negatively impact new growth in Wisconsin communities by removing the tools previously given by the state to finance local economic growth.

### *ACEC WI Supports*

- Initiatives supporting economic development and jobs, with consideration of future costs and safety concerns, and allowing state and local governments to meet their bond obligations.
- Reasonable investments in future infrastructure for both short and long term needs.

## **Procurement**

### **Qualifications-Based Selection**

Engineering projects are typically technically complex. Years of education and experience are required to effectively apply these skills to obtain the best value for the public client. Too often procurement of engineering services are being bid and awarded to the lowest price. Often low bid designs result in problems including change orders and high construction cost. It is in the public's best interest when consulting engineers are selected on the basis of qualifications rather than price. The Federal Government mandates the use of Qualifications-Based Selection (QBS) to select and contract for engineering and architectural services (Public Law 92-582, the Brooks Act). Federal funding is tied to this mandate. Currently, QBS legislation is on the books in 46 states.

“The American Public Works Association believes the public interest is best served when governmental agencies select architects, engineers, and related professional technical consultants for projects and studies through QBS procedures. Basing selection on qualifications and competence, rather than price alone, fosters greater creativity and flexibility and minimizes the potential for disputes and litigation.” (APWA Policy Statement)

The Wisconsin Departments of Transportation, Natural Resources, and Administration Division of State Facilities all support the use of the QBS process in selecting design professionals for state projects.

High quality engineering and design services represent a very small percentage of total project costs, yet they directly affect the entire project budget and long-term costs. Reducing the opportunity for engineers and architects to consider alternative approaches to public projects often results in more expensive and less efficient projects. QBS safeguards public safety and public funds by enabling public agencies to acquire the services of the most qualified engineering firm for a particular project at a reasonable cost.

### *ACEC WI supports*

- Legislation requiring the use of a Qualifications-Based Selection (QBS) process for procurement of consulting engineering services on all projects partially or totally funded by the state.

## **Design-Build**

Various delivery methods are available to take a project from concept to completion. These include the traditional design-bid-build, design-build, design-build-operate-

maintain, and construction management. Each method has benefits and risks that need to be evaluated for each project.

Design-build is a system of procuring the design and construction of a project from a single source under one contract with the owner. It has been successfully used in the private sector as a method for facility improvements or new facilities. It has been used on select public projects in Wisconsin when it is in the best interest of the public and is the procurement method of choice for many federal agencies that require a Qualifications-Based Selection (QBS) process.

Increasingly, public owners are requesting they be allowed to use design-build for delivering construction projects. Current state statute recognizes only design-bid-build for most public projects.

#### *ACEC WI supports*

- The ability of public owners to make educated decisions when selecting a project delivery method, including design-build.
- Legislation that requires the use of a Qualifications-Based Selection (QBS) process when selecting participants in a design-build project.

### **Infrastructure Investments**

Throughout Wisconsin people are discussing the pace of growth in their communities and the challenges associated with it. Communities are challenged with making necessary improvements to their aging infrastructure, while facing other monetary demands and ever increasing budgetary challenges. They are challenged with managing future development, preventing overcrowding in schools, and preserving open space. As our state continues to grow, infrastructure improvements and development must be closely coordinated and complement each other to produce healthy, vibrant communities.

Economic growth must happen now to build a greater Wisconsin of the future. To start the economic engine, the state must first invest in its infrastructure. Because of the time element involved in these engineering projects, it is important to look ahead 10 to 20 years to see how decisions made today will affect infrastructure, transportation, and economic issues in the future.

### **Infrastructure**

Public understanding of the infrastructure and its importance to social well being is critical. Economic pressure has been a factor in evaluating projects for our deteriorating cities, roads, and public services. Consulting engineers have been important partners for municipal and state governments in designing technically feasible, yet cost effective measures to minimize the adverse impact of this deterioration and solve these infrastructure challenges. Technical and telecommunication (broadband) issues are also critical to economic growth. We need to support the skeleton of data flow that has been integrated into our transportation network. A strong infrastructure leads to continued economic growth for Wisconsin's business and its residents.

#### *ACEC WI supports*

- Local government funding through state revolving funds (SRF) and other avenues, to help address necessary replacement of aging water and wastewater systems as well as other infrastructure needs.
- Innovative and creative funding approaches that assure adequate monies to help retain Wisconsin's infrastructure in a condition that accommodates growth while fully complying with state and federal environmental regulations.
- A "common sense" implementation of environmental regulations.

### **Water and Wastewater**

Combined with other key elements of Wisconsin's infrastructure, quality of life, and economy depend on the availability of good drinking water and acceptable wastewater treatment systems. Supporting economic growth requires a continuous investment in water and wastewater infrastructure.

Many communities face a critical backlog of unfunded needs due to aging water and wastewater systems. According to the latest EPA Needs Assessment for water and wastewater systems in Wisconsin, water systems require an investment of almost \$600 million and wastewater systems require almost \$1.3 billion over the next 20 years.

#### *ACEC WI supports*

- Increased funding for the Safe Drinking Water and Clean Water State Revolving Loan programs.
- Regulations that allow consulting engineers to utilize innovative solutions while solving difficult problems.
- Funding for systems to improve the security of our water and wastewater facilities.
- DNR's recommendations for changes to the Hardship Program Loans and Grants to communities to encourage increased program utilization.
- Continued use of the Department of Commerce's Community Development Block Grants (CDBG) funding for public infrastructure projects.
- Developing a Regional Water Supply Plan throughout the State linked to the Great Lakes Compact.
- Identification and prototype, or full scale testing of potential solutions like wastewater recharge and water reuse to better manage the State's natural resources.
- Funding Great Lakes clean-up efforts to protect the environment and development of lakefront communities.

### **Transportation**

A perfect storm of a shrinking funding base, escalating construction costs, and increased demands on an aging infrastructure has developed in Wisconsin, putting the quality of the state's transportation system at the greatest risk in recent decades. A safe, well-maintained, and interconnected multi-modal transportation system remains a cornerstone of our economy in Wisconsin.

It is time to change the way Wisconsin funds transportation systems. The legislature needs to act to enact real change. Unless Wisconsin does something now, the people and businesses of the state will see a decline in the safety and quality of the state's entire transportation system.

Wisconsin traditionally depends on a very narrow revenue base for transportation funding. That base, the gas tax, provides approximately 95% of the state generated transportation revenues but is now crippled by the repeal of automatic indexing. Increased use of fuel efficient cars and alternative fuels and higher gas prices may reduce the gas consumption and gas tax, but not the number of vehicles on the road. Without the inflation adjustment typical of other state revenues, like income and sales tax, future gas tax revenues will slip in the face of even modest inflation.

To further compound the predicament, transfers of transportation funds and increased reliance on bonding for projects over the last few years will cause even greater competition for funds in the future as the debt service load erodes our purchasing power.

The Department of Transportation is in the process of reconstructing the southeast freeway system and, with rapidly escalating construction prices, the program cost is likely to rise. We must continue to devote resources to this project because it is vital to the economy of Milwaukee and the state. At the same time, we need to continue to make investments to improve efficiency and safety in other areas of the state.

In as few as 10 years, the net buying power for investment in our transportation system is expected to decrease by 22%. Even today, Wisconsin spends 20% less than the national average and less than any other Midwest state on a cost per mile of travel basis.

While many budget items are viewed as costs, investments in transportation provide a 3:1 return (according to a recent Cambridge Systematics study). Therefore, we encourage improving the transportation funding system as a segregated fund.

Wisconsin's economic growth depends on adequate transportation. In the globally competitive marketplace, many factors can cost the state new or existing jobs – factors like poorly maintained, antiquated, or over crowded roads.

#### *ACEC WI supports*

Promoting Wisconsin's transportation infrastructure as a stimulus to economic growth by:

- Aggressively pursuing new and different revenue sources for the entire multi-modal transportation program.
- Maintaining a strong investment in major projects with TPC oversight.
- Providing for the adequate, timely maintenance of the system.
- Exploring public-private teamwork for programming, planning, designing, building, maintaining, and operating parts of the system.
- Making transportation safety a funding priority.
- Replacing tax revenue lost due to the use of alternative fuels and high mileage vehicles.
- Maintaining the segregated account for transportation funding.

#### **Environmental and Development Issues**

Wisconsin has long been a leader in the area of environmental protection. This environmental ethic has become a reality through the combined efforts of business,

industry, government, and environmental groups. While protecting and enhancing the environmental quality in Wisconsin continues to be a priority, economic and mobility issues must also be addressed. New laws or requirements must be based on sound science and prioritized to ensure scarce resources, directed at addressing environmental and development issues, produce meaningful and positive results without damaging economic vitality.

### **Sustainable Development**

Sustainable development utilizes systems design and construction practices that result in holistic benefits to the environment, economy, and society. Through an increased awareness of environmental concerns and the implementation of legislative initiatives, sustainable development is being incorporated into a growing number of development projects across the state.

An opportunity exists for the consulting community to work with our state, county, and local governments to develop methods for encouraging sustainable development practices in Wisconsin. It is important design professionals maintain an active role in sustainable development. Through innovative technology and design practice, the industry is in a unique position to improve development procedures. By collaborating with developers and local governments, landscapes may be preserved and enhanced while providing quality environments in which to live, work, and play.

#### *ACEC WI supports*

- Working with local and state governments to initiate economic incentive programs, including grants, reduced interest loans, and/or tax incentives, to encourage the incorporation of sustainable elements and/or the use of LEED certification on development projects.
- Regulatory changes that recognize alternative design practices, such as naturalized stormwater treatment and conservation subdivision design.
- Legislation and/or governmental programs, such as *Conserve Wisconsin*, which require sustainable elements on projects funded with tax dollars.
- Use of Wisconsin registered professional engineers and scientists as key partners in supporting and implementing required sustainable design practice.

### **Brownfield Development**

The vast majority of Wisconsin properties believed to be contaminated and requiring cleanup could be considered brownfields. Brownfields are the abandoned, idled, or under used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. These sites, often found in urban areas, provide opportunities for development and the creation of jobs.

Brownfield properties are an economic burden for the community. These sites contribute little or nothing to the tax base and cause a greater tax burden for other properties to offset the idle site. Brownfield incentives can create new jobs and increase local tax revenue, state, and federal income taxes. Secondary benefits include increasing construction jobs, decreasing neighborhood crime, and increasing the value of neighboring properties.

It is important that the consulting engineering community have a strong voice in brownfield reform. Its professionals can effectively identify and communicate the cleanup process. Its assistance contributes to urban redevelopment and helps control suburban sprawl.

*ACEC WI supports*

- Economic incentives such as grants, low or no interest loans, and tax incentives to encourage the cleanup, redevelopment, and reuse of brownfields for industrial, commercial, and residential purposes.
- Increased Brownfield Grant funding and legislation that limits liability of consultants and developers of brownfield sites.
- Requirements that Wisconsin registered professional engineers, geologists, hydrogeologists, and soil scientists are key partners in the investigation and clean up teams.
- Processes in which the Brownfield Grant applications are reviewed and awarded to Wisconsin communities on a continuous application cycle.
- Environmental cleanup regulation changes and a regulatory climate that streamlines the brownfield redevelopment process.

**Renewable Energy**

The state's dependence on fossil fuels depletes scarce natural resources, increases reliance on foreign supplies, and furthers the debate regarding the environmental impacts of these fuels. While significant technological advancements have been made to reduce environmental impacts and stem the controversy, the fact is, dependence on fossil fuels still remains. At the same time, the state has a growing need for reliable energy sources at affordable costs. The situation dictates a closer evaluation of alternative fuel supplies, including renewable energy sources such as: water (hydroelectric), wind, landfill and digester gas, and biomass. Consulting engineers can assist with the evaluation of these alternative energy sources and, where feasible, design and manage their implementation.

*ACEC WI supports*

- State agency leadership in the evaluation and utilization of renewable energy sources to meet operational needs.
- The state developing incentives for private entities and public-private partnerships to pursue the use of renewable energy sources.
- Streamlined permitting and licensing procedures for renewable energy projects.

**Nonpoint Source Pollution**

Reducing nonpoint sources of pollutants has, in recent years, become a focal point in efforts to clean up and protect our state's valuable surface waters. In response to EPA rules, the DNR adopted Chapter NR216 of the Wisconsin Administrative Code in 1994, which established the stormwater discharge permit program. Phase I of this program has required many communities and businesses throughout the state to begin managing stormwater runoff discharged from separate storm sewer systems. Phase II, which is currently being implemented, will impact about 100 municipalities in Wisconsin.

*ACEC WI supports*

- Grant programs established under Chapters NR153 and NR155 of the Wisconsin Administrative Code to help fund municipal stormwater management planning and construction projects.
- Allow consulting engineers to utilize innovative solutions to control stormwater quantity and quality.
- Policies that cost effectively reduce nonpoint source pollution from agricultural sources and provide funding opportunities for their implementation.
- Technical standards and evaluation of pollutant removal efficiencies for stormwater treatment devices.

### **Business Issues**

Government cannot create businesses, but it can create fertile conditions for growth by building a strong business environment. Utilizing consulting engineers efficiently, reducing excessive litigation, making unreasonable indemnification clauses unenforceable, and working to control health care costs are some of the ways government can help Wisconsin businesses grow.

### **Engineering Companies Service to the State of Wisconsin**

Wisconsin's public infrastructure needs are far greater than state government's internal capacity to deliver—this is where Wisconsin professional service firms are vital assets. Effective use of public agency staffs and private sector companies for the most efficient use of limited resources is a key answer to the significant funding challenges facing government today.

High quality teams of engineers, planners, architects, scientists, and other related professional technical staff are available in the private sector to complement state government agencies by providing the expertise, state of the art technology, and experience necessary to complete high quality projects in an efficient, cost effective manner.

Use of Wisconsin engineering companies provides employment for state residents, contributes property and business taxes to help support state and local programs, and encourages the development of technologies that benefit economic growth

ACEC WI supports:

- A state budget that encourages the use of engineering companies to complement state agency work.
- The use of engineering companies to assist in the management of special programs and initiatives. State agencies that recognize the benefit of using local Wisconsin firms.

### **Contract Fairness**

Professional services delivered in support of state, county, and local government projects typically involve multiple parties contributing to enhancements of the public infrastructure, facilities, and environment.

It is common for construction contractor services to accept broad or intermediate form indemnification language, and it is common for state, county, and local government to

impose this type of contract language upon professional services. The net effect is the consulting engineering firm, while not in the insurance business, is placed in the position of making a promise of indemnification for losses outside its control or unrelated to its own negligence. The firm is assuming risk for other parties' negligence.

Because the risks are not insurable, within the professional services industry this is considered inappropriate. If the indemnity were limited to non-professional operations triggered by damage or bodily injury, it would mirror the broadest coverage available under a typical commercial general liability (CGL) policy. However, CGL policies expressly exclude professional services. Extending the demand that the consulting engineering firm's CGL policy cover losses, damages, lawsuits for injury to persons, or damages to property, arising from or related to the services provided, regardless of contributory negligence, imposes a liability upon the firm to act as the insurer of the client for all possible claims.

Many states across the country have recognized the inequity of such indemnification clauses and have passed legislation making such clauses illegal.

#### *ACEC WI supports*

- Legislation that makes illegal those contract provisions that seek to impose liability upon consulting engineers for the negligence, errors, omissions, or acts of third parties by virtue of the firm's participation in a project. Consulting engineering firms should be accountable only to the extent of their own negligence, errors, or omissions.

#### **Tort Reform**

Excessive litigation continues to cost businesses and individuals huge sums of money. The current tort liability system is inefficient, with much of the cost being spent on the process of assigning blame, rather than compensating for injuries. The economy suffers when productivity and growth are slowed by excessive litigation, which discourages innovation and slows the introduction of new products and technologies.

Tort liability reform seeks to provide fairness, equity, and justice through the legal system. Such measures would help streamline the civil justice system.

#### *ACEC WI supports*

- Strengthened anti-fraud provisions of the Workers' Compensation Act to ensure that fraudulent claims are discouraged and prosecuted.
- Legislative initiatives that reform the legal system to reduce the number of frivolous lawsuits filed each year and make the plaintiff responsible for all legal costs when proven to be the major responsible party when a suit is judged to be frivolous.

#### **Municipal Finance**

There is a broad range of incentives to fund infrastructure in Wisconsin. Local units of government should be allowed to choose methods they believe appropriate for their communities, including property tax, impact fees, and utilities. While it may not be possible to keep shared revenue at existing levels, maintaining the current Tax Incremental Finance (TIF) law is a vital part of municipal finance.

Wisconsin TIF revenues are a major source of funding the local community share of Department of Commerce's public facilities projects for economic development block grants. The Wisconsin Department of Commerce is projecting a reduction of federal community development block grant (CDBG) funding. A reduction in the amount of funding for each CDBG potential project is therefore anticipated. TIF revenues may be the best funding source to be utilized by Wisconsin communities to fill the funding gap left by grant reductions.

*ACEC WI supports*

- Continued availability of TIFs for promoting planned growth and development for local government units.
- Assurances that TIF revenues are not reduced by future tax reduction proposals.

**Rising Health Care Costs**

Health care costs are rising dramatically, often at double-digit growth rates. It is one of the most challenging issues facing businesses, schools, local governments, and individuals. If Wisconsin can control health care costs, it will reap a significant economic development advantage by increasing the competitive position of its firms and becoming a relatively more attractive place to do business.

*ACEC WI supports*

- Legislation that develops and implements innovative policies that will help address health care cost pressures.