

ACEC INSIGHTS

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF MASSACHUSETTS

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Climate Change, Sustainability and Resiliency Considerations In Design: Professional Liability Risk Issues for Consulting Engineers

by David J. Hatem, PC and Patricia B. Gary, Esq.

Introduction

Climate change, sustainability and resiliency (CCSR) considerations are increasingly becoming important in the design process. Project owners are being presented and challenged with a range of legally permissible decisions regarding design options reflecting greater or less sensitivity to CCSR considerations. That field of options and range of corresponding owner decisions present professional liability risk issues for consulting engineers.¹

Background Discussion

Around the world, climate change is recognized as the greatest environmental challenge of this generation. Yet, the World Federation of Engineering Organizations (WFEO) notes that “legislation and regulation in the field of climate

change adaptation is sparse.”² WFEO has developed a Model Code of Practice (“Code”), to assist engineers and national engineering organizations to “interpret and implement principles of climate change adaptation at a practical level.” The terms “climate change,” “resiliency”, and “sustainability” are defined as follows:³

- **Climate Change:** Climate change refers to a statistically significant variation in either the mean state of the climate or in its variability, persisting for an extended period (typically decades or longer). Climate change may be due to natural internal processes or external forces, or to persistent anthropogenic changes in the composition of the atmosphere or in land use.



- **Resiliency:** The ability of a system to withstand stress, adapt and recover from a crisis or disaster and move on. Resiliency is the societal benefit of collective efforts to build collective capacity and the ability to withstand stress including that caused by a changing climate.

[➔ continued on page 2](#)

President’s Message

Mike Scipione, 2017–2018 ACEC/IMA President



Well, it sure is a busy time at ACEC and in our industry. As a business association, we keep on top of trends and advocate for our profession and member firms. It feels like the pace of change is accelerating. The MBTA has a new General Manager—Luis Ramirez, the MassDOT has a new permanent Highway Administrator—Jonathan Gulliver, with whom we will have a briefing on November 7, and the Red Sox have a new Manager (doesn’t impact our business but it’s interesting)!

Abbie Goodman emails out, on Thursday mornings at 8:30 am *ACEC/Matters*, which provides good information on important ACEC/MA items. Please let us know if you do not receive this electronic news as some spam filters catch it. We will continue to have member briefings and programs so that our member firms are up to date and knowledgeable about changes that affect us all.

Some of the most recent information and changes we can pass along includes the following:

- Past president Mark Bartlett testified on our behalf on House Bill 2777, which would start the process for the state to take over the NPDES program. Massachusetts is one of only four states that does not administer the NPDES Program and by the end of 2018 it is expected that we will be one of three (Idaho will be administering it by then). This Bill was sponsored by the Governor, and EOEEA is currently advocating heavily for this change.
- The Governor held a “One Year In” conference to present and discuss progress made on Executive Order 569, Establishing an Integrated Climate Change Strategy. This conference was held on September 12 in Westborough at the Division of Fisheries and

[➔ continued on page 7](#)

CONTENTS

CLIMATE CHANGE

- 4 Municipal Vulnerability Preparedness Program and Nature Based Solutions

TOPICS OF INTEREST

- 5 Virtual Reality in the Design World
- 5 How to Land Your Next Strategic Hire
- 7 Do You Want to Hear Good News or Bad News?
- 8 MassDOT Appoints Jonathan Gulliver Highway Administrator
- 8 The Value of Joining our Program Committee
- 8 Overview of 2017 Election Results

IN EVERY ISSUE

- 9 What Has ACEC/MA Done For You Lately?
- 10 ACEC/MA News and Notes
- 11 Upcoming Events & New Members

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Climate Change, Sustainability and Resiliency

continued from page 1

• **Sustainability:** Ability to meet the needs of the present without compromising the ability of future generations to meet their own needs, through the balanced application of integrated planning and the combination of environmental, social, and economic decision-making processes.⁴

Current scientific knowledge proves that climate change is occurring globally, and that the Earth is warming, leading to reduced snow pack, global sea level rise, extreme weather events, and increased flooding. Coastal areas are particularly vulnerable to climate change. Predictions of sea level rise vary, but in Massachusetts for example, scientists expect the sea to rise at least another foot by the end of the century, and depending upon future levels of greenhouse gas emissions, the magnitude of melting arctic ice, and thermal expansion of the oceans, sea level rise is forecasted to be as much as six feet.⁵

Change in weather patterns can adversely affect the design, operation and management of engineered systems if future climate risks are underestimated by historical climatic design data.⁶ Moreover, a design professional's reliance on existing regulatory standards and codes may be unreasonable if historic climate information is not reflective of future climate conditions. There is a risk that despite adherence to codes or regulations, the design professional may be held accountable for failing to conduct an appropriate climate vulnerability risk assessment and/or failing to consider climate change and extreme weather events in project design.

Professional organizations such as ACEC and WFEO recognize the responsibility of engineers to “hold paramount the safety, health and welfare of the public in the performance of their professional duties.”⁷ Engineers have the responsibility to stay informed about climate change and its potential impacts on their practice because “climate science and how it relates to the practice of the profession is evolving.”⁸ In evaluating whether a professional has exercised the competence and skill that is usual in the profession, courts will consider the climate change concerns that could reasonably be identified based on scientific knowledge at the time the service was performed, and the engineer's scope of services.

Professional Liability Risk Issues and Risk Management for Consulting Engineers

Presently, there is not much meaningful literature or legal precedent specifically applicable to CCSR professional liability risk

issues for consulting engineers. That said, based on analogous experience, likely areas of professional liability risk include the following:

The Professional Standard of Care

At a minimum, the professional standard of care requires compliance with public law—e.g. codes, regulations, statutes and other mandatory requirements—but good design practices typically require more than mere public law compliance. The common law standard of care for design professionals is defined as the ordinary and reasonable care typically exercised by one in the same profession, on the same type of project, under similar circumstances. As noted by the Massachusetts Supreme Judicial Court, “professionals, do not have a duty to be perfect in their work, but rather are expected to exercise that skill and judgment which can be reasonably expected from similarly situated professionals.”⁹ The professional standard of care is evolving due to increased scientific knowledge of potential climate change impacts.

Current trends in global warming and climate change are projected to continue into the future. If the standard of care reflects an understanding that applicable codes and regulations are outdated, an engineer's failure to consider and anticipate the impacts of climate change on their professional work may be construed by a trier of fact as professional negligence. Given the rapidly changing state of knowledge regarding the impact of climate change, engineers should endeavor to implement climate adaptation measures into their practice.

Risk Arising Out Of Client Design Decisions

Consulting engineers are retained by clients to make recommendations as to certain aspects of project design. The scope of those recommendations typically depends upon and derives from the scope of services commissioned by the client, and may or may not include CCSR considerations. Ultimately, the client makes the programmatic decisions that impact project design. Client design decisions and sensitivity (or lack thereof) to CCSR could have a significant potential impact on the quality of the completed project and an impact on third-parties (such as adjacent property owners). Consulting engineers should consider including recommendations in scope proposals regarding the investigation and evaluation of CCSR factors. Contractual scope should be clearly articulated and documented. Clients should be informed of project-specific risks

Climate Change, Sustainability and Resiliency

continued from page 2

associated with the need or advisability for consideration of specific CCSR factors.

CCSR: Risk Management Path Forward

Given the regulatory, technical and professional standard of care novelties, evolutions, and uncertainties associated with CCSR design, it is presently challenging to advance specific, effective and responsive risk management strategies. From a more macro perspective, however, the following observations should be considered:

- As in the case of other risk issues for consulting engineers, the key to effective risk management rests with project owners making prudent and sensible decisions regarding CCSR design considerations. More client awareness, sensitivity and sophistication are critically important initiatives. Consulting

engineers should serve a critically important role in influencing owner decisions as to design options that adequately evaluate and address CCSR factors.

- Reliance upon primarily risk reactive and protective measures—such as releases and limitations of liability, indemnification, and disclaimers, will not, in a broader sense, provide effective risk management strategies for the consulting engineer.
- Consulting engineers should lead in the process of acculturating their clients to the need to prudently evaluate and implement CCSR into project design.

Failure of the project design to address CCSR factors will result in significant professional liability risk for the consulting engineer, both to its client and to a host of third parties.

Conclusion

Engineers should stay informed about potential climate risks on projects, and make recommendations to clients regarding the advisability of authorizing investigations studies, and evaluations of effective adaptation options and measures. Client design decisions and sensitivity to climate change, sustainability and resiliency will have a significant potential impact on the quality of the completed projects and the safety, health and welfare of the public.

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1 Professional liability risk issues for consulting engineers in the CCSR context are discussed in more detail in D. Hatem, "Green and Sustainable Design, Part I: Professional Liability Risk and Insurability Issues for Design Professionals," *Design and Construction Management Professional Reporter* (June 2010).

2 World Federation Of Engineering Organizations, "Model Code of Practice: Principles of Climate Change Adaptation for Engineers," December 2015, p. 8.

3 "Model Code of Practice" *supra* at p. 33-35.

4 In 1987, the United Nations World Commission on Environment and Development (WCED), chaired by Gro Harlem Brundtland of Norway, published a report, *Our Common Future*, and coined the term "sustainable development": "Sustainable development is that which meets the needs of the present without compromising the ability of future generations to meet their own needs." See P. Gary, Chapter 13, *The Future of Megaprojects*, Megaprojects, Challenges And Recommended Practices, ed. D. Hatem and D. Corkum (ACEC 2010).

5 "Massachusetts Climate Change Adaptation Report," Executive Office of Energy and Environmental Affairs and Adaptation Advisory Committee, September 2011

6 "Model Code of Practice," *supra*, at p. 7.

7 See <http://www.acec.org/about/ethics> (Professional and Ethical Conduct Guides); see also 250 CMR 4.00 Professional Responsibility (Massachusetts).

8 Professional Engineers and Geoscientists of BC, "APEGBC's Climate Resilience Guidelines," February 9, 2017, p.

9 *LeBlanc v. Logan Hilton*, 463 Mass. 316, 329, 974 N.E.2d 34 (2012) (quoting *Klein v. Catalano*, 386 Mass. 701, 718, 437 N.E.2d 514 (1982)).

Massachusetts Income Tax for Education and Transportation Initiative—A.K.A. Millionaire's Tax Initiative

The November 6, 2018 Election in Massachusetts includes a ballot question that would create an additional 4 percent tax, also known as a surtax, on income above \$1 million. The Millionaire's Tax Initiative seeks to fund public education, public colleges and universities, road and bridge repairs, and public transportation. [Read the amendment here.](#)

IN SUMMARY:

A "YES" vote supports this initiative to increase the income tax to 9.1 percent on the portion of incomes above \$1 million for the purpose of providing funds for public education, roads and bridges, and public transportation.

Raise Up Massachusetts, a Boston-based nonprofit coalition, is the proponent of the initiative which they have labeled as the "[Fair Share Amendment](#)." The coalition includes many social, faith and labor organizations ([click here see the members](#)), who believe that this is "the best way to help working families and build a stronger economy."

A "NO" vote opposes this initiative to increase the income tax to 9.1 percent on the portion of incomes above \$1 million for the purpose of providing funds for public education, roads and bridges, and public transportation.

Opponents to the ballot are led by the Massachusetts High Technology Council (MHTC), along with the Massachusetts Taxpayers Foundation, Associated Industries of Massachusetts, Massachusetts Competitive Partnership, and the Greater Boston Chamber of Commerce. Their position is that passage of the ballot would negatively impact the economy and make Massachusetts a less desirable place to conduct business.

Municipal Vulnerability Preparedness Program and Nature Based Solutions

by *The Nature Conservancy*

Climate change is the biggest threat to life on Earth. Massachusetts is in the eye of the storm with Nor'easters hammering our coastlines, hurricanes slamming our river valleys and heat stressing our vulnerable populations. As we've seen in recent months, extreme storms—exacerbated by climate change—have pummeled our neighbors with hurricanes Harvey, Irma, and Maria.

The Nature Conservancy (TNC) has been collaborating with the Baker-Polito Administration's on a two-pronged approach to climate change—adaptation and mitigation. Adaptation helps us manage the unavoidable. Mitigation helps us avoid the un-manageable.

TNC and the Baker-Polito Administration share common approaches to climate change policy using science-based methods, metrics to measure success and collaboration to drive innovation.

Governor Baker's [Executive Order](#) embodied these approaches and included two important initiatives for climate adaptation: technical assistance for municipalities and a state-wide adaptation management plan.

The Municipal Vulnerability Preparedness Program (MVP) will help communities manage the unavoidable impacts of climate change by enhancing safety, avoiding costs and conserving natural resources in our cities and towns.

The MVP grant program will provide 66 communities with technical assistance using a proven bottom-up stakeholder process—known as the Community Resilience Building workshop guide, developed and proven by TNC in over 40 communities in 5 states—to identify and address economic, social and environmental challenges. Importantly, it helps identify community strengths and vulnerabilities, framing a dialogue that focuses on both challenges and opportunities as the

climate changes. Almost 300 service providers, including representatives from many ACEC-member engineering firms, have now taken the training to be certified MVP service providers.

MVP communities will be encouraged to use nature-based solutions. TNC and partners have worked in the Taunton River and Connecticut Watersheds for over 15 years to use nature-based solutions. We have collaborated with municipalities, the regional planning agency and conservation organizations on nature-based solutions such as restoring floodplains and removing obsolete dams—all of which enhances safety and reduces flooding. Using nature-based solutions also helps reduce emissions by conserving and enhancing nature's cycles that capture and prevent greenhouse gases such as methane and carbon.

Based on a survey of municipal officials needs related to climate change, we developed a toolkit for municipalities that is responsive to their needs. The tool kit provides case studies, guidance, model ordinances and by-laws and cost-benefit models.

The Baker Administration has also launched a process to develop and implement a statewide integrated Climate Adaptation and Natural Hazard Mitigation Plan. The Plan will provide a roadmap for the future of managing climate change impacts in Massachusetts. The plan will take a careful look at Massachusetts vulnerabilities in the economy, state government, municipalities, infrastructure and natural resources. The plan will set priorities and outcomes, designate who is on point, when things get done and how they will be funded. EEA is convening stakeholders, including engineers, to hear their input on the Plan.

TNC will continue to collaborate with the Administration on climate change with the goal of providing the best science to help

determine the most effective approaches. We want to ensure sound implementation for MVP and the state-wide plan, and to leverage public and private funding to achieve results.

All of this leadership on climate change is really great. But our work is far from finished. We want to continue to collaborate with the Baker Administration and municipal partners to take some additional steps as well on both adaptation and mitigation.

Regarding adaptation, the TNC supports making Governor Baker's Climate Change Executive Order more permanent for the longevity of the MVP through enactment of CAMP legislation. ACEC is a member of the Climate Adaptation Coalition, which is co-lead by TNC and Mass Audubon, so please keep an eye out for request from ACEC to contact your state legislators. In recent years TNC and ACEC have advocated together for robust infrastructure funding for removal and repair of dams and seawalls, clean drinking and wastewater, and safer road crossings.

In addition to collaboration with the public sector, we want to figure out how to drive private sector innovation and collaboration to help address climate change across the Commonwealth. Engineering firms can and should play an important role in advising both public and private clients about the implication of climate change on their designs.

TNC applauds ACEC's efforts on climate change and we look forward to continued collaboration.

The Nature Conservancy is a leading global conservation organization that focuses on environmental challenges and pursuing local, state-wide, regional, national and global solutions. They are helping to protect Massachusetts lands and waters for nature and people. [Click here to learn more.](#)

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For information or reservations, contact Rich Keenan, Aldrich Center Manager at 617/305-4110 or rkeenan@engineers.org

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UPCOMING ISSUES OF INSIGHTS

Insights is published four times a year—fall, winter, spring and summer. Watch for our Winter issue in which we continue to focus on regulations, technology and other impacts to our industry. If you would like to contribute an article to *Insights* or have ideas for new topics, please contact Allison Hopkins at allison.hopkins@tetrattech.com or Debbie Whitney at DebbieWhitney@tighebond.com.

Virtual Reality in the Design World

by H. Scott Aldridge, Innovation & Disruptive Technology Leader, CDM Smith

Building Lasting Infrastructure, The HoloLens Way

“Mixed Reality” is an emerging technology ushering in a new working environment where architectural designs combine with reality, and construction teams transform digital content into physical objects. Mixed reality tools, like the Microsoft HoloLens, combine elements from the real world with interactive computer generated experiences to integrate design, construction and operation processes and portray building plans in their finalized state.

This wearable, self-contained holographic computer features a transparent display and advanced sensors that create an immersive environment where users can interact with 3D holograms in combination with the physical world. Gesture, gaze and voice commands guide users to interact with 3D models, observe real-time data flows, see behind and inside hidden spaces within a design, work with remote experts concurrently and control smart components virtually.

Mixed Reality in the AEC Industry

HoloLens is revolutionizing the AEC industry, changing the way in which designers, constructors, operators and stakeholders interact. When applied to large infrastructure projects, mixed reality applications help better visualize structures to scale and operate infrastructure assets more efficiently. HoloLens helps teams visualize projects by bringing both 2D and 3D concepts to life in an immersive 3D environment unlike any time before, combining real and virtual entities. By using HoloLens, teams can identify problems before they occur, increase communications between designers, owners and constructors, and

ultimately streamline the process of bringing an idea to fruition.

In this highly collaborative working environment, it is easier than ever to foster participation and create reliable construction designs matching project requirements early-on in the design phase. Experiencing concepts to scale in a spatially accurate 3D environment instills a shared understanding of project concepts and helps identify issues early on for an immersive, expedited design review experience. This expedited decision-making process directly benefits project schedule and budget, as any clashes, conflicts or needed changes to design elements can be identified and addressed before significant investments are made.

Mixed reality is also revolutionizing the way we engage stakeholders. This immersive visual medium is an effective tool for educating the public and building consensus on infrastructure projects. The HoloLens encourages public participation in infrastructure planning and development, enabling stakeholders to visualize infrastructure to scale, understand project impacts and design alternatives.

Harnessing Mixed Reality In Practice

CDM Smith is working with our clients to harness the power of HoloLens to help them design, build and operate their infrastructure assets faster and more efficiently. Combining sensor data, software analytics and mixed reality, HoloLens leverages the most timely and relevant project information to augment human senses and help team members perceive a project in its final form in a way not possible before now.

Using the HoloLens, our clients have leveraged a previously invisible world of data, taking 3D

models off 2D screens and integrating this digital content into the physical world. For example, mixed reality helped the Michigan Department of Transportation successfully deliver a facility upgrade at the Blue Water Bridge (BWB) Plaza border crossing in Port Huron, Michigan. The second most traveled U.S.-Canadian commercial truck crossing, HoloLens helped create a [full-scale virtual model portraying upgrades to the Blue Water Bridge Plaza](#) that enabled project members to walk through the plaza's proposed design and identify design changes long before construction even began. This shared holographic perspective helped engage stakeholders and establish consistency between project members, making it easier to identify potential challenges, optimize schedule and manage risk.

This shared collaboration platform can empower the next generation of designers and builders, helping firms push industry boundaries and deliver superior innovative solutions in water, environment, transportation, energy and facilities to public and private clients worldwide.

It is hard to say what the industry will look like immersive technologies like HoloLens become an integrated part of operations, but these impactful technologies are not just industry trends but real game-changers in the realm of design and construction. These technologies uncover opportunities on a broad scale previously considered impossible, just as revolutionary innovations should.

H. Scott Aldridge leads the Innovation & Disruptive Technology group at CDM Smith where he provides guidance and drives awareness of emerging technologies in pursuit of digital business innovation. He can be reached at 919/325-3557 or aldridgehs@cdmsmith.com.

How to Land Your Next Strategic Hire

by Rich Friedman



When it comes to project acquisition, many architecture, engineering and construction (AEC) and environmental consulting firms have learned (and some the hard way) that

it pays to take a strategic approach. Yet, when making critical hires to grow their business, strategy and targeting can often go out the window.

In this article, we examine how the lessons of client and project acquisition apply to the hiring of C-suite positions, practice builders,

senior marketers and business developers, and other senior management roles.

It's currently a candidate's market, and the types of leaders who can make a big impact in your organization are no strangers to being recruited. To bring them on board requires a clear strategy, a compelling message and a carefully executed interview process.

Stage One: Defining the Opportunity

Know what you want and why

When you pursue a project, if you don't have a vision or know how you'll define success, it's

easy to waste time and effort, or end up with work that's not a good fit. The same is true in executive search. Articulating your “why” is important. What strategic needs will this position meet? How does their role fit into your business plan? How will you measure their success?

Are you searching for a president because you don't feel comfortable with the internal talent or because you want to benchmark against other firms? Why are you hiring a market sector

[➔ continued on page 6](#)

How to Land Your Next Strategic Hire

continued from page 5

leader and what is your strategy to enter or grow that market? How does that tie into your business plan and strategic plan?

These “whys” should be clearly reflected in the position description. That means thinking through the title, reporting hierarchy, ownership opportunities and position within the leadership structure. Put yourself in a typical candidate’s shoes, so that you’re setting realistic expectations on both sides.

Craft a solid pitch

Once you’re clear on the role and expectations, it’s time to consider how you’ll position your firm and the opportunity to desirable candidates. Clean, crisp messaging that tells them about your firm and your aspirations, what you’re looking for and why they should be motivated sets a positive, professional tone right out of the gate.

In crafting your pitch, you should address candidates’ most frequently asked questions, such as:

- The strategic rationale for this position
- Your firm’s culture
- Your strategic plan and process
- Your approach to business development and marketing
- High-profile clients/projects
- Expectations and success metrics
- Advancement potential, including ownership and leadership development
- Compensation range and benefits

When reaching out to candidates, you’ll likely get voice mail. If you’re lucky, you’ll catch them live, but they likely won’t be able to speak. Either way, you’ll want to distill your pitch into a compelling elevator speech and schedule a confidential screening call to discuss the opportunity. The more compelling your message, the better your results.

Stage Two: Research and Preparation

Do your homework

Do you go after every RFP that crosses your desk? Or do you target only the opportunities that make sense for your business plan? Finding the talent to grow your business is the same. It hinges on carefully identifying potential candidates and proactively pursuing them.

Few firms have success finding high-level candidates through job postings, which tend to attract lower-caliber candidates, such as

those who are out of work or take a passive approach to their career. That might be fine for junior or mid-level hires, but it takes well-planned outreach to bring in top senior management talent.

Start by developing a target list of competitors that you respect, along with people you believe could be a good fit for your goals. Research LinkedIn, tap work colleagues, network through professional associations and talk with your business partners to identify strong candidates.

For strategic, senior-level hires, a few minutes on LinkedIn provides a wealth of important intel:

- Do they have a robust LinkedIn profile? Anyone with the initiative to lead a company and/or grow business knows this is an important outward face to the industry.
- Are they active in outreach with a high number of connections?
- Are they giving talks, publishing articles or using social media or blogs to participate in the industry or market?
- Are they active where clients congregate?
- Do they follow industry groups to stay up on news?
- Do they have recommendations from clients, partners or professional association staff? (In contrast, LinkedIn endorsements carry little weight.)

Set up a clear process

Many firms use a consultant for high-level searches. If you’re going it alone, designating an internal point person to manage your search is not optional. It will be that person’s job to keep things moving and to be asking “how will this play with candidates?” at every step.

If your initial outreach is successful, you can assess chemistry and develop initial impressions with a casual coffee meeting. You can learn a lot in these “get-to-know” meetings: what questions they ask, whether they did their homework, would they fit in and how they might interact with clients and staff.

For example, one executive search client felt that something might be “off” after speaking with a candidate, but couldn’t identify what it was until that candidate brought up inappropriate benefits minutiae at this initial meeting. That short interaction saved them time and trouble and allowed them to quickly move ahead with other candidates.

Other tips for successful interviewing:

- Set a schedule and stick to it. Avoid delays and stay in regular communication with candidates. Some firms let weeks go by, which encourages candidates to question your interest and leaves the door open for other firms.
- Consider group interviews. This enables you to see how a candidate thinks on their feet and allows interviewers to compare notes on the same experience.
- Respect confidentiality. In another search I conducted, a candidate who was active in industry associations expressed concerns about confidentiality upfront. Unfortunately, not everyone on the interview team took this seriously. When word got out about their interest, trust was eroded and the candidate opted out.
- Ensure that interviewers read the candidate’s resume and LinkedIn profile before the interview. Not doing so reflects poorly on your firm and sends the message that you don’t value the candidate’s time.
- Debrief candidates after each round of interviews to assess their interest, identify concerns and answer questions, then feed this intel back to committee decision-makers.

Stage Three: Onboarding

Make an offer they won’t refuse

Once you’ve decided on your candidate, be prepared to come out of the gate with your best offer (knowing that small details can still be negotiated). If you don’t, you risk leaving a bad taste with your potential hire and eroding their trust in your firm.

Start onboarding early

You’ll improve your odds when you think of onboarding as ongoing versus a post-hire activity. That means basing your pitch in reality, highlighting your culture and following through on your promises all the way through the process. Remember that your search is the first taste of what it’s like to work at your firm. Actions speak just as loud—if not louder—than your most compelling pitch.

Have a success story—or horror story—about hiring for a critical role to grow your business? I’d love to hear it.

Rich Friedman is President of Friedman & Partners, a marketing and management consulting firm serving the AEC industry. He can be reached at rich@friedmanpartners.com or 508/276-1101.

Do You Want to Hear Good News or Bad News?

by Ed Musmon, MBA, CMA, Founder and Principal of Financial Management Consulting



Okay, that is a trick question, but why is it a trick question? Read on, and I will explain.

We are all programmed to want to hear good news. I am no exception. I love to hear positive feedback about something I did right or about a good result. It feels good, and it reinforces how we see ourselves in a positive light or that we are achieving. But simply hearing the Good News isn't enough.

The real world doesn't function with only Good Results or Good News. Problems happen, things go wrong in many ways. It is essential that we hear and that we are open to hearing the Bad News. More importantly, we hear it sooner rather than later.

I was recently reading Richard Clarke's new book entitled *Warnings: Finding Cassandras to Stop Catastrophes*. (It is a very good read, and I recommend it.) So, who was Cassandra and what was special about her? According to Greek mythology, Cassandra was able to see the future

and pending disasters. Unfortunately, she was cursed not to be believed. As a result, disasters that could have been avoided were not.

Clarke aims to make us aware of the Cassandras amongst us, the potential disasters they see now and to trigger us into taking action before it is too late.

Circling back to my initial question; I conclude that we need to be alert, aware and listening to the Bad News. I believe it is critically important to hear Bad News as early as possible, and hopefully when action can be taken to mitigate/reduce the negative impacts. Bad News is not like wine. It does not get better with age.

So what does this mean for you? I suggest you ask yourself the following: Am I getting the Bad News and am I getting it when it is first known?

Reflecting back, I have worked in settings where fear ruled, where a shoot the messenger philosophy lived. The result was predictable; information was withheld, sometimes because

people hoped the situation would improve or because they hoped it would be discovered long after they were gone. However, I have also worked in settings where the culture (from the top – the place where culture begins) allowed and in fact encouraged people to communicate bad news, and to do it early. They created the expectation that problems (i.e., bad news) would be reported right away. None of that shoot the messenger stuff. Staff was encouraged to come forward with problems along with recommendations to correct and to request help from above if needed.

So, I ask which scenario describes your organization. If you answered the latter, then congratulations are in order. If you answered the former or you are not sure, then you have some work to do.

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President's Message

continued from page 1

Wildlife's "Net -Zero Energy" Building (great space by the way). This Executive Order, among other things, requires state agencies to look at their programs and plan for climate change. The EO is contained [here](#) if you would like to review it. The Conference was well attended and much progress has been made in a year.

- The Board of Professional Licensure is discussing requiring Continuing Education for Massachusetts PEs and PLSs. ACEC has worked with the board on this for several years and we are now seeing positive change here.
- There has been some conflict between the Architectural Registration Board and our Profession over items such as contract signing and who is in responsible charge of a vertical building project. ACEC/MA's Building Engineering Committee led by Nick Ferzacca and Dan Tenney with help from Joe Gesker of Donovan-Hatem and Abbie Goodman has

done a nice job of explaining the issues in a practical way that seems to be allowing more positive discussions and resolutions than in the recent past. We expect this change to improve business practices.

In the late summer, an Engineering Summit was held in Omaha to ponder and discuss changes in our profession and the future of engineering. Some interesting thoughts came out of this summit and the summary is entitled *The FUTURE IS ENGINEERING*. [Here is the link to the summary](#).

- The ACEC MA Board will be discussing this at their next Board meeting.
- The DCR announced a change in how they will procure our services going forward. They will use an OSD state contracting mechanism entitled PRF69 it has some provisions that we do not like such as a 1% administrative fee so please read the procurement carefully. However, at our recent member briefing on

this procurement, John Clarkson from DCR was expecting that this overall new contract mechanism will be helpful for DCR to procure more of our services and helpful to the DCR and other State and possibly municipal organizations.

- ACEC MA website is changing with work actively in progress to provide a nice new look.

The Economy has held strong, the stock market continues to be strong and consulting engineering firms along with their staff throughout the Commonwealth are all very busy.

These are pretty good times for us all, and in these good times there are opportunities and changes, hopefully they are all for the better of our industry.

Let's continue to work together for positive change for us all.

Massachusetts Department of Transportation Appoints Jonathan Gulliver Highway Administrator

excerpted from this [MassDOT blog](#)

Johnathan Gulliver, who recently was appointed MassDOT's new Highway Administrator, has more than two decades of experience in state government and in managing complex transportation projects. He has been serving as Acting Highway Administrator since May 2017.

While serving as Acting Highway Administrator, Gulliver has helped oversee numerous major projects such as the \$81.8 million Commonwealth Avenue Bridge Replacement Project in Boston, the \$244 million Fore River Bridge Replacement Project

in Quincy and Weymouth, and other infrastructure work including the Route 3 northbound bridge replacement project which occurred in a single weekend.

Gulliver comes to the position with a depth of engineering and statewide experience. Prior to being named the Acting Highway Administrator, he served as the MassDOT District 3 Highway Director responsible for the state highway and bridge system covering 77 municipalities throughout Central Massachusetts. He has also served as the Project Development Director for MassDOT's District 6 in Metro-Boston.

Prior to joining MassDOT in 2009, Gulliver served as the Deputy Chief Engineer of the Department of Conservation and Recreation where he responsible for the management of special agency projects and the \$ billion Metro-Boston Accelerated Bridge Program. Gulliver's team focused on contextually sensitive transportation projects on the Metropolitan Parkway System. Gulliver also holds a degree in Civil Engineering from Worcester Polytechnic Institute.

The Value of Joining our Program Committee

by James Barnack, Jacobs

Let's face it—attracting new members to join a committee is not easy, especially when everyone is trying to fit more into their work and personal lives than ever before. ACEC/MA is a great organization with a lot of active members and one of the most active committees, the Program Committee, is looking for new members. Our committee wants to grow and add members to be able to plan more events that assist the engineering community to build and grow their business. Why join the Program Committee? Because we meet monthly and every May our meeting is at a local bar where we celebrate Cinco de Mayo.

I joined the Program Committee six years ago and am currently the co-chair. I have really enjoyed the opportunity to serve as co-chair for the past three years and it has been a great way for me to become more involved with the engineering community. We plan 6–8 programs every year with our key program, State Markets, being held every April, allowing the public sector to provide an update on upcoming projects and to discuss their procurement processes. Being involved has allowed me to meet clients I may never have met while planning events. I've been able grow my business skills by planning and managing

finances for programs every year, have learned about an array of engineering services and projects outside of my skillset. Most importantly, I am able to develop lifelong connections with my fellow colleagues on the committee.

Volunteering my time isn't always easy, but the hard work is certainly recognized by senior management at Jacobs. We are always looking for fresh ideas—new members are welcome to join the Program Committee at any time. If you or a colleague feel you would be a good fit and would like more information please contact [James Barnack](#) or send an email to [ACEC/MA](#) to find out more!

Overview of 2017 Election Results

Democrats in Haverhill and North Adams won open House seats on November 7 and legislators unseated incumbent mayors in Attleboro and Lynn. This clears the way for another pair of special elections.

Sen. Thomas McGee defeated Lynn Mayor Judith Flanagan Kennedy and Rep. Paul Heroux was elected Mayor of Attleboro, unseating incumbent Mayor Kevin Dumas. Since Senator McGee was the co-chair of the Joint Committee on Transportation, Senate President Stan Rosenberg will be appointing a new Senate chair.

In a special election for the State Representative seat in Haverhill previously held by Brian Dempsey, who resigned over the summer to take a lobbying job, Democrat City Councilor Andres Vargas won the seat.

In the northwest, Democrat John Barrett won the First Berkshires District seat that had been held by the late Rep. Gailanne Cariddi of North Adams, who died in June after battling cancer. Barrett is the former mayor of North Adams. The house district covers Adams, Cheshire, Clarksburg, Florida, Hancock, Lanesborough, New Ashford, North Adams, and Williamstown.

The focus will now switch to the 2018 elections. This includes governor, US Senate, and US House races (plus an open seat for Rep. Niki Tsongas's district, as she is not running for re-election). The election also encompasses other state-wide and state legislative races, as well as a number of ballot questions.

What Has ACEC/MA Done For You Lately?

Fall 2017

With the support of our member firms, ACEC/MA works hard to protect and promote your business in a variety of ways. In addition to our robust programs, here is an account of our recent actions.

MASSACHUSETTS AGENCIES

- ACEC/MA's Transportation Agency Liaison Committee (TALC) partnering groups meet with MassDOT Highway, MBTA and Massport on a range of issues to help agencies streamline project delivery. TALC hosted key leaders from the agencies over the past few months discussing such issues as cost estimating, invoicing issues, developing MBTA project scopes of work and quality assurance.
- Our ACEC/MA DCAMM Partnering Committee continues to meet with the Division of Capital Asset Maintenance and Management (DCAMM) Deputy Commissioner and key staff on contract issues and design specifications.
- Recent client sector ACEC/MA Member Briefings with key public agency leaders include ACEC/MA's Energy and Environmental Affairs Committee (EEAC) briefing with procurement leaders from the state's Operational Services Division (OSD) and the Department of Conservation and Recreation (DCR) to discuss the new statewide contract for engineering services and the Building Engineering Committee with the Designer Selection Board Executive Director.

LEGISLATIVE AND REGULATORY

- ACEC/MA continues to co-chair the Water Infrastructure Alliance, a broad-based group of business, industry, government and environmental organizations focused on the needs for more funding for water, sewer and stormwater management infrastructure. We recently hosted a meeting with State Senator Julian Cyr to discuss his legislation to create new revenue mechanisms for water infrastructure.
- ACEC/MA recently testified in support of water infrastructure funding at the late October hearing of Joint Committee on the Environment, Natural Resources and Agriculture.
- We continue to advocate for changes to draft regulations proposed by the Board of Registration of Architects to prevent promulgation of regulations that would adversely impact A&E firms.
- Through TECET, The Engineering Center Education Trust, ACEC/MA participates in meetings of the Board of Registration of Professional Engineers and Professional Land Surveyors.
- ACEC/MA continues to support or oppose Massachusetts Senate and House bills that affect our industry.

PROFESSIONAL PRACTICE

- Registration opens soon for ACEC/MA's 2018 Genesis Program, a leadership education program for new professionals, this program helps the participant understand the transition from the university to the professional environment. Plans are underway for our Emerging Leaders Program, which will start in March 2018.
- We held several successful programs this fall: *Trains, Skates and Running Shoes at Boston Landing*, *Reality Check—Living with BIM in Public Bidding*, and *Profitable Practice for Engineers in Design-Build*.
- Plans are underway for a Small Business Roundtable, our State Markets Conference and our Engineering Excellence Awards Gala on March 14. Our fall Effective Writing Program sold out; we're planning our spring session of this popular program.
- Recent Member Briefings, open to all employees of ACEC/MA Member Firms, included: IS Forum: Project Scheduling Software & Hypervisor Review, A&F Forum: Trends in Mergers and Acquisitions and Internal Ownership Transition, Health & Safety Forum: discussion of a range of issues impacting firms and clients, HR Forum: Employee Wellness Programs and Private Sector Committee: Briefing on South Shore Economic Development.

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ACEC/MA NEWS AND NOTES

Zoom Into ACEC/MA From Your Office or Desktop

Did you know that many ACEC/MA Committees and Forums meet both in person and by Zoom, enabling members to see and hear other participants? Receive updates on our committees' and forums' activities and news that will help your professional practice and the business issues facing your team. Many of our November and December Forums will use Zoom. Check our events on www.acecma.org and then:

Join an ACEC/MA Forum or Committee

ACEC/MA Committees recommend legislation in Massachusetts, brief you on public policy issues, provide leadership education and guidance and oversee the performance of ACEC/MA programs. [Sign up here](#) to receive email updates on how to attend in person or by Zoom from your office. (Note: TALC [Transportation Agencies Liaison Committee] does not hold its monthly meetings on Zoom, due to the meeting size.

Make Your Resolution for 2018: Present Your Profession to K–12 Students

Sign your team up for this Free TECET Webinar—*Know Your Audience: How to Present your Profession to K–12 Students*, being held on December 8, 2017, noon – 12:45 pm, in Your Office with Your Team via Zoom.

Accounting and Finance Forum Focuses on Trends in Mergers and Acquisitions and Internal Ownership Transition

ACEC/MA's October 31 Accounting and Finance Forum was led by David Cohen of Affiliate member firm Matheson Financial Advisors, Inc. Thank you to David and our A&F Forum Co-Chairs for organizing this informative session, available in-person and on Zoom for members. The ACEC/MA A&F Forum Co-Chairs are Jacqueline M. Weir, BDO USA and Chad J. DaGraca, CPA, DiCicco, Gulman & Company LLP.

ACEC/MA Government Affairs Update

Urgent: House Tax Bill Excludes "Passthrough" Firms from Lower Rates—Immediate Member Action Needed

Draft tax reform legislation released today by the House Ways and Means Committee lowers the corporate tax rate from 35 percent to 20 percent and creates a new 25 percent rate for the business income of passthroughs, such as S corporations



At the the Accounting & Finance Forum (left to right): Chad DaGraca (DiCicco, Gulman & Company), David Cohen (Matheson Financial Advisors), Jackie Weir (BDO USA) and Ed Musmon (Financial Management Consulting)

and partnerships, but excludes professional services firms—including engineering firms—from the lower passthrough rate.

At the same time, the bill eliminates numerous tax credits and deductions, which means that the effective tax rate for engineering firms organized as passthroughs would increase.

"ACEC strongly opposes the passthrough exclusion," said ACEC President/CEO Dave Raymond, "and we are working with Congressional leadership to eliminate it." [Click here](#) to read Raymond's media statement.

ACEC Member Firms organized as passthroughs are encouraged to contact their Representatives in November to express their opposition to the plan. [Click here](#) for more information and to access a sample letter.

October 26, 2017 PE and PLS (EN) Board of Registration Meeting

The Massachusetts Board of Registration of Professional Engineers and Professional Land Surveyors met and discussed the following:

- Joanne Linowes, Co-Chair of ACEC/MA Leadership Education Committee, has been appointed the public member of the Board of Registration and attended her first board meeting on 10/26/17.
- State websites on mass.gov are in transition to a new platform. As a result the DPL website and the individual boards' websites are using a combination of the new platform and the old system. It can be challenging to

find certain documents or the "Check A License" function.

- The Division of Professional Licensure is expected to go paperless for renewals in 2020, with notification about this given during the 2018 renewal process for the PE & PLS Board. Licensees would be expected to just login to renew their licenses with no reminder from the Commonwealth. This caused concern with the board members as well as the public attendees. There will be additional discussion on this issue.
- At the November meeting, the board expects to spend some time discussing the minimum requirements for solar panel installation, particularly on homes, as some of the design work is being done by unlicensed people.
- In November, there may also be a discussion about the need for an advisory opinion on MassDOT plans that do not conform to state standards.
- The draft Continuing Professional Competency regulations were reviewed line by line, but any action is tabled until the November or December meeting. In 250 CMR, the relevant sections are 2.09, 5.02 and 7.02.

Join an ACEC National Committee

ACEC National committees recommend legislation, provide guidance and oversee the performance of ACEC programs. [Sign up here.](#)

UPCOMING EVENTS — SAVE THE DATE

ACEC/MA 2018 Engineering Excellence and Awards Gala

Royal Sonesta Hotel Boston, Cambridge, MA
Wednesday March 14, 2018

ACEC/MA State Markets Conference

Massachusetts Hospital Association Conference Center, Burlington, MA
April 5, 2018

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Flink Consulting LLC

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Needham, MA 02492
617/448-1548

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Firm Representative: Ruth Bonsignore, PE

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Risk Strategies Company
160 Federal Street
Boston, MA 02110
617/330-5700

www.risk-strategies.com

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