Testimony of
Donald L. Mader, Executive Director
American Council of Engineering Companies of Ohio
to the
House Commerce & Labor Committee
regarding House Bill 180
May 19, 2015

Chairman Young, members of the committee, I am Don Mader, Executive Director of the American Council of Engineering Companies of Ohio, a trade association of 120 companies that design all kinds of constructed facilities; everything from highways and bridges, to water and wastewater plants, to buildings and industrial and manufacturing facilities.

Our member companies range in size from very small specialty engineering firms of only one or two people to some that employ hundreds. Our average size company employs 50 persons.

We work very closely with contractors, inasmuch as they end up building what we design, so we sympathize totally with their concerns regarding municipalities that require contractors to hire a quota of municipal residents in order to bid on city projects.

These residency requirements cause major problems for engineering firms, as well, although our problems are somewhat different from our contractor friends.

Unlike contractors, engineering firms compete for work on the basis of their professional qualifications, not by low bid. In order to be selected by either public or private owners to design their projects, it behooves an engineering firm to retain the very best engineering talent that is available. And that talent is very hard to find.

In order to be licensed as a professional engineer, you must obtain a four-year degree from an accredited engineering program, accumulate four years of engineering work experience and then pass a rigorous license exam.

An engineering degree and a professional engineer's license are highly valued credentials and, as you can imagine, individuals who have obtained these credentials are highly compensated. When an engineering firm succeeds in obtaining the services of a

skilled professional engineer, they normally will do everything to retain the services of such an individual.

What this means is that it is much more difficult for an engineering firm, just as it would be for a law firm or accounting firm, to add and subtract from its staff just to meet arbitrary municipal residency requirements.

As I mentioned earlier, engineering firms tend to be small operations. Our average size firm has only 50 employees, and they may be spread out over three or four offices in various cities throughout the state.

Unlike construction, engineering is not site-dependent. Thanks to advancements in electronic communication and engineering design software, an engineer in Ohio can work on a project in Cincinnati today, one in St. Louis tomorrow and one in Paris the third day.

This kind of efficiency should be encouraged, because it enables local governments to obtain high quality engineering service at a reasonable cost.

As you can see from the attached letter, the city of Akron's recently announced Professional Workforce Goals require that 30 percent of an engineering firm's employees must be Akron residents in order for an engineering firm to obtain a contract with the city. That percentage requirement increases to 35 percent by 2018.

Yet, the city's requirement are actually much more onerous than even these goals would suggest, in that the city also requires that "66 percent of all hours worked (including subconsultant work) on a particular project [are] to be performed by employees paying city of Akron income tax."

So as an engineering firm manager, I not only have to make sure 30 percent of my office staff lives in the city, I've somehow got to make sure that two-thirds of the hours worked on any given project are performed by city income tax-payers.

I have been associated with this industry for nearly 35 years, and I'd like for someone to explain to me how – on any engineering project – one might reasonably manage this.

Let's say an engineering firm is fortunate enough to be retained to design a complex project, such as a water treatment plant, and suppose that firm's top environmental engineer lives outside the municipality? How do you meet this 66 percent requirement? Do

you put your best environmental engineer to work on it until it's a third designed, then replace him or her with another, less accomplished engineer who happens to live within the city?

I would hope reasonable people would agree that this is not good public policy, but that's exactly what these municipal residency requirement would force us to do – discriminate for or against employees based merely on their place of residence.

Further complicating matters, the city says that to ensure a firm meets the 66 percent requirement it will have a third-party organization monitor how many employees are working on a project and where those employees live. This means the firm will be required to divulge confidential employee information, such as employee addresses, to a third party, which can expose the firm to legal liability for failing to protect employee privacy rights.

As you might imagine, the design of any major construction project is extremely complicated and technical, and involves a team of engineers, technicians and other professionals.

What these residency requirements mandate is that, instead of assigning the firm's most highly qualified technical experts to the design of a particular project, the engineering firm's first consideration must be to make sure that two-thirds of the work is performed by city taxpayers.

How does this make any sense? I wonder if the municipalities who are imposing such requirements on professional engineering firms also impose them on law firms, or accounting firms or IT consulting firms they routinely retain?

Perhaps most significantly, these municipal residency requirements conflict directly with a key section of the Ohio Revised Code that specifies how local governments are to select engineers and architects for the design of public works projects.

Section 153.65-.73 requires that when a local government seeks to contract with an engineering firm to design a public works project, that contract award must be made to the "most highly qualified firm," based on a defined set of criteria – and where the employees of competing engineering firms live is not listed as a qualification factor that may be considered in the evaluation process.

The contradictions implicit in these residency requirements are ironic on several levels. The Ohio Supreme Court has already ruled that a municipality can't dictate where its employees live, yet that same municipality might think itself justified in dictating where those who are employed by another party must live.

The most unfair aspect of this is that these restrictions cannot be enforced on out-of-state companies, as courts have repeatedly ruled doing so violates the U.S. Constitution's Privileges and Immunities Clause.

Ultimately, we believe these arbitrary residency requirements have the potential to do real, long-term economic damage to Ohio's construction and design industries.

If I owned a construction company or engineering firm and I were barred from competing for a municipal contract just because too few of my employees resided in that jurisdiction, my response is going to be to go back to my home town city officials and ask them to enact similar restrictions.

If I owned a construction company or engineering firm near the state border, I'd have to seriously consider moving to an adjoining state to skirt these residency requirements that thwart me from competing in the marketplace.

Taken to its logical extreme, if these residency requirements are allowed to stand, we will end up with a situation in which contractors and designers will be frozen out of being able to compete in many jurisdictions. That will lead to less competition and higher prices for public works design and construction contracts. It's simple supply and demand.

For all of these reasons, we urge the committee to support House Bill 180.

Thank you for the opportunity to testify. I will be happy to try to answer any questions you may have.