



Hon. Andrew M. Cuomo  
Governor of New York  
NYS Capitol Building  
Albany, NY 12224

June 18, 2020

Dear Governor Cuomo,

For the first time in months, construction companies across New York are back at work. Unfortunately, due to the COVID-19 pandemic, New York's economy is sputtering, our state and local budgets are in tatters, and our state's citizens are more anxious and fearful than at any time in recent memory. You and your team have outlined a bold vision of infrastructure projects and small business support.

However, there is a glaring structural problem hindering your agenda, and our state's chances at recovery- the antiquated, inequitable, and absurd Scaffold Law (NYS Labor Law sections 240/241). There are oceans of data supporting the repeal of this outdated statute, and quite literally no data to support its continuation. It is propped up by special interest groups who profit from its inequities at the public's expense. This crisis presents an opportunity to fix the Scaffold Law and help our state come back strong.

Using your office's executive order authority, our office respectfully requests the issuance of a moratorium of twelve (12) months on the Scaffold Law's application of "absolute liability."

This letter highlights some of the key data supporting the Scaffold Law's moratorium.

#### Infrastructure

- It costs more to build infrastructure projects in New York than anywhere else in the world.<sup>1</sup> A mile of subway in NYC costs \$3.1B versus \$928M in American cities like San Francisco, or \$400M in similarly dense cities like Tokyo.
- Insurance costs on the Second Avenue Subway ballooned from \$93M to \$554M, a rise blamed on the Scaffold Law.<sup>2</sup>
- The Scaffold Law is estimated to have added \$200M - \$400M to the cost of the Mario Cuomo bridge.<sup>3</sup>

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<sup>1</sup> Bradford, Ben, "Why are Subways in the U.S. so expensive?", Marketplace, National Public Radio, April 2019. <https://www.marketplace.org/2019/04/11/subways-us-expensive-cost-comparison/>

<sup>2</sup> "Critics blame Scaffold Law for megaproject's insurance costs ballooning 557%", Crains New York Business, August 2018. <https://www.crainsnewyork.com/article/20180730/POLITICS/180739992/critics-blame-scaffold-law-for-megaproject-s-insurance-costs-ballooning-557>

<sup>3</sup> Estimate by Willis of New York.

- Liability costs on one joint New York/New Jersey bridge project are more than double on the New York side, strongly suggesting that state laws, not construction costs, are to blame for the cost increase.<sup>4</sup>
- Across the state, the Scaffold Law is estimated to add over \$785M in annual costs to public projects.<sup>5</sup>
- On a per project basis, the Scaffold Law is estimated to add an additional 7% to large-scale construction projects.<sup>6</sup>
- The Scaffold Law hinders disaster relief, as evidenced by Habitat for Humanity and several other non-profits struggling to get insurance for rebuilding projects in the wake of Superstorm Sandy.

### Insurance

- Most national insurers will not write construction policies in New York and some of the few remaining insurers have stopped writing policies in the last few years.<sup>7</sup>
- Insurance availability threatened the Owner-Controlled Insurance Program of the New York School Construction Authority (SCA) which provides insurance to over 800 M/WBE firms.<sup>8</sup>

### Education

- The New York School Boards Association estimates that the Scaffold Law costs upstate schools \$200M annually.
- In 2013, the New York School Construction Authority was nearly unable to get insurance for its \$2 billion capital program, despite an excellent safety record. The new insurance costs are \$240M for 2014, nearly triple that of the previous year.<sup>9</sup>
- The SCA's increased insurance costs are equivalent to 8-10 new schools over a 3-year period.<sup>10</sup>

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<sup>4</sup> According to claims data provided by the Port Authority of New York and New Jersey.

[https://corporatesolutions.swissre.com/insights/knowledge/newyork\\_law\\_coverage.html](https://corporatesolutions.swissre.com/insights/knowledge/newyork_law_coverage.html)

<sup>5</sup> Hattery, M, Geddes, R, and Kay, M. "The Costs of Labor Law 240 on New York's Economy and Public Infrastructure", Rockefeller Institute of Government, 2013.

<http://www.nycji.org/images/documents/2014-02-study-The-Costs-of-Labor-Law-240-on-New-York-Economy-and-Public-Infrastructure.pdf>

<sup>6</sup> "Scaffold Law Bumped This Project's Insurance Tab by 557 Percent", Habitat Magazine, August 2018.

<https://www.habitatmag.com/Publication-Content/Legal-Financial/2018/2018-August/Scaffold-Law-Costs>

<sup>7</sup> Bull, David. "Nationwide E&S pulls back from NY construction." The Insurance Insider, 2018.

<sup>8</sup> Grillo, Lorraine, letter to all NYCSCA contractors, July 2013.

<sup>9</sup> Gieger, Dan. "School Construction Authority Hit With Huge Bill", Crain's New York Business, 2013.

<sup>10</sup> Office of NYC Public Advocate Bill de Blasio. "The Pre-K Crunch: How NYC Parents Struggle to Find Pre-Kindergarten Slots." 2013.

## Law

- The problematic absolute liability of the Scaffold Law is not written into the original law. Rather, it is the result of judicial interpretation, suggesting that this was not the original legislative intent.
- The number of Scaffold Law cases has increased 500% since 1990, despite a drop in overall construction injuries.<sup>11</sup> A contributing factor to these claims is the compensation arrangement of plaintiff's attorneys. Suspect and often frivolous claims would not be pursued but for the absolute liability provision of the law.

## Public Support

- Progressive Speaker of the New York City Assembly, Corey Johnson, called for repealing New York's Scaffold Law in his plan to fix the MTA.<sup>12</sup>
- Over half of the state's county governments have passed resolutions supporting the reform or repeal of the state's Scaffold Law.<sup>13</sup>
- New York is the only remaining state that has a law like the Scaffold Law. Illinois repealed its Scaffold Law in 1995, and construction-related fatalities decreased by 26% over 5 years.<sup>14</sup>

There are dozens of other reports, articles, and studies pointing to the outsized costs and lack of benefit of the Scaffold Law. In public comments, you have expressed support for fixing the Scaffold Law, but lamented that the "Trial lawyers are the single most powerful political force in Albany." At this crucial time, where the electorate is acutely aware of the devastation COVID-19 has wrought upon our economy, we must cut down special interests in favor of the public interest. Now is the time to act.

In the coming months, our state will struggle to recover from the COVID-19 pandemic and civil unrest. Businesses will go bankrupt, putting more strain on public services. Local governments will fail to meet their loan obligations, further increasing our chances of spiraling into a full-scale economic depression.

In order to avoid this catastrophe, we must find cost-effective solutions to help the public and private sector. No single solution would have so great a benefit, with so little detriment, as fixing

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<sup>11</sup> Hattery, M, Geddes, R, and Kay, M. "The Costs of Labor Law 240 on New York's Economy and Public Infrastructure", Rockefeller Institute of Government, 2013.

<sup>12</sup> Campanile, Carl, "Corey Johnson targets Scaffold Law in his plan to fix the MTA", *New York Post*, March 2019.

<sup>13</sup> New York State Association of Counties, "NYSAC Standing Committee on Employee Relations, Resolution #1", 2016

<sup>14</sup> United States Department of Labor, Bureau of Labor Statistics [Census of Fatal Occupational Injuries](#)

the anachronistic and inequitable Scaffold Law. As such, we respectfully request the issuance of an executive order placing a moratorium on the application of the “absolute liability” provisions of the Labor Law for twelve (12) months.

Thank you for your consideration.

Sincerely,

Allied Building Metal  
American Property Casualty Insurance Association  
Associated Builders and Contractors  
Associated General Contractors  
Association for a Better Long Island  
Big I New York  
Brooklyn Chamber of Commerce  
Bronx Chamber of Commerce  
Business Council of Westchester  
Buffalo Niagara Partnership  
Builders Exchange of the Southern Tier  
Building Owners and Managers of Buffalo  
Building Owners and Managers Association of Westchester New York  
Business Council of Westchester  
Capital Region Chamber of Commerce  
Construction Exchange of Buffalo  
Greater Binghamton Chamber of Commerce  
Home Builders and Remodelers of Central New York  
Lawsuit Reform Alliance of New York  
Long Island Builders Institute  
The Minority & Women Contractors & Developers Association  
New York City Special Riggers Association  
New York Federation for Independent Business  
New York State Builders Association  
New York State School Boards Association  
North Country Chamber of Commerce  
Northeastern Retail Lumber Association  
Northeastern Subcontractors Association  
Queens Chamber of Commerce  
Real Estate Board of New York  
Rockland Business Association  
Subcontractors Trade Association  
Syracuse Builders Exchange  
Trucking Association of New York  
Westchester County Association

Cc: Linda Lacewell, Superintendent, Department of Financial Services