

Rep. Jacobs Testimony before the House Transportation & Infrastructure Committee Member Day Hearing April 14, 2021.

Hello. Thank you to the Committee for letting us be here today.

As we move forward with efforts to expand our nation's infrastructure I want to bring to your attention an important issue in my home state of New York. New York is currently the only state in the union to impose absolute liability on employers and property owners for gravity-related injuries. This archaic standard is enshrined in New York's Labor Law 240/241, otherwise known as the "Scaffold Law."

Absolute liability under the Scaffold Law means employers and property owners are fully liable for worksite accidents, regardless of the contributing fault of the worker. To understand the injustice of this law, take for example that courts have ruled repeatedly that the intoxication of an employee is not a defense for an employer under the statute. Contrast this with the liability standard of comparative negligence – the standard in every other state – which allows for a reasonable determination of fault between two parties.

Studies have indicated the Scaffold Law adds approximately 8-10% to the cost of construction in New York State. Due in part to the extreme standard set by the Scaffold Law, the cost of construction in New York is higher than anywhere else in the nation, resulting in unnecessary taxpayer spending across all levels of government. According to one study, the Scaffold Law is expected to add an additional \$180 to \$300 million to the Gateway Program. The Tappan Zee Bridge is estimated to have incurred up to \$400 million in additional costs due to the Scaffold Law. In a recent amicus brief, the New York City Transit Authority stated it is in an existential financial crisis. Its public liability burden in 2019 was \$150 million dollars, much of that due to the Scaffold Law. These costs represent hundreds of millions of dollars that could have gone toward improving our schools, repairing the New York City subway, or fixing our roads.

Defenders of the Scaffold Law say that it improves worksite safety, but data shows the opposite. A study deemed "practice ready" by the Transportation Research Board of the National Academies of Science, Medicine, and Engineering concluded that the law actually increases both fatal and non-fatal injuries by 670 each year.

The challenges presented by the Scaffold Law are why I have championed the Infrastructure Expansion Act (H.R. 1300), which would exempt federally funded projects from the Scaffold Law and instead place them on a standard of comparative negligence.

Mr. Chairman I would like entered into the record a letter of support from over sixty-five organizations throughout New York State supporting my bill.

The Scaffold Law is particularly challenging for minority and women owned businesses, as the inflated premiums they must pay for liability insurance puts them at a competitive disadvantage when bidding for projects against larger firms. That is why groups such as the Minority & Women Contractors & Developers Association and the National Association of

Minority Contractors have been vocal supporters of Scaffold Law reform. I am proud to have their support for my bill.

Other supporters of Scaffold Law reform and my bill include the New York State Association for Affordable Housing. The Scaffold Law is estimated to add \$10,000 to the cost of a single-family home in New York State. Anyone interested in making New York State more affordable for families should support inclusion of my legislation in any infrastructure package.

Another supporter I am proud to have is Habitat for Humanity. Like the New York State Association for Affordable Housing, Habitat for Humanity appreciates efforts to make housing in New York more affordable. However, they have an additional issue with the Scaffold Law. In the wake of Superstorm Sandy, Habitat and its volunteer partners rushed to help Long Island recover, however they struggled to find insurance because of the Scaffold Law.

For the sake of our roads, our bridges, our schools, our railroads, our homes and all New Yorkers, the Scaffold Law must be reformed. I urge the Committee to include my legislation in the infrastructure package. With that I yield back.