

OP-ED

A law you've never heard of is slowing our state's progress

Posted November 1, 2018



By Mitchell Pally

Schools and bridges are crumbling across New York state. Many Long Island hospitals are outdated, and local downtowns are in desperate need of revitalization. But New York's "Scaffold Law" makes us among the most difficult places in the country to get projects like these off the ground. If elected officials are serious about investing in our state, growing the economy and creating jobs, they can start by reforming this outrageous law.

The impact of the scaffold law is very real here in Long Island. The Metropolitan Transportation Authority is about to kick off a \$5.6 billion capital project to transform the Long Island Rail Road, but the scaffold law will add between \$216 million and \$317 million in needless cost to that desperately needed project. Those are taxpayer dollars that could be spent on other critical infrastructure projects, invested in schools or put back into the pockets of riders and taxpayers. Even the new Islanders arena at Belmont Park, which is slated to cost about \$1 billion, will squander between \$39 million and \$57 million to cover the scaffold law. These are unconscionable wastes of money.

The impact is even more stark statewide. Each year, the scaffold law costs New York taxpayers \$785 million. That's a huge chunk of public funds that could be spent on tax relief, schools, health care or other critical public services. Instead, it's unnecessarily wasted to pay for insurance on public-works projects. With wages stagnant, the state economy struggling and sky-high property taxes crushing families, what excuse do lawmakers have for not reforming this outrageous law?

You've likely never heard of the scaffold law, which imposes "absolute liability" on contractors and property owners for gravity-related injuries — a.k.a. falls — that happen on the job. That means that if a construction worker falls off a ladder (or any point of elevation) on a job site, New York law holds the contractor 100

percent responsible, even if the worker's negligence or failure to use safety equipment contributed to the accident. New York is the only state in the nation with the lopsided policy of absolute liability.

In other words, if a roofer sawed a hole around himself and fell through the ceiling, the construction company that employs him would be found 100 percent responsible for his injuries in court.

This outrageous law, written in the 1800s, means astronomical insurance costs for construction projects. In fact, because of the scaffold law, New York is the most expensive state in the nation for general-liability insurance on construction projects. This is not a distinction we should be proud of.

The change we need is simple. The current policy of absolute liability must be replaced with "comparative negligence." This would allow a jury to assign liability in proportion to actual fault, which is how every other state in the nation handles gravity-related worksite incidents. This would reduce insurance costs, bring smaller minority- and women-owned businesses to the table, bolster development and bring New York's laws in line with those of the other 49 states.

So why is this law still on the books? Personal-injury trial lawyers have lined their pockets from scaffold law settlements, and spend heavily on lobbying and political contributions to keep the law as is. Any incident on a job site is almost guaranteed to result in a payout, which automatically means big contingency fees for lawyers. It's no wonder they're standing in the way of reform.

Meanwhile, there is no evidence that the law improves safety, as the trial lawyer lobby claims. Studies show it actually increases the risk of accidents on construction sites, because it reduces investment in construction site safety. Nevertheless, trial lawyers are perfectly happy to reap financial benefits from scaffold law payouts, at the expense of injured workers and all of New York's taxpayers.

It's time for elected officials to stand up to the personal injury bar's special interests and let common sense prevail over political expediency. Reforming the scaffold law is a concrete step that lawmakers can take to boost New York's economy, reduce the tax burden and create good-paying jobs for our residents. I urge taxpayers and voters who care about building a sustainable economic future here in Long Island, and throughout the state, to raise their voices and tell their elected officials to finally reform the outrageous, only-in-New-York scaffold law.

Mitchell Pally is CEO of the Long Island Builders Institute and a member of the MTA board.