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## **MEMORANDUM OF SUPPORT**

**BILL: S.543 (Gallivan) / A.3209 (Morelle)**

**SUBJECT: Scaffold Law Reform - Establishes a Comparative Negligence Standard for Claims under Labor Law section 240**

**DATE: May 8, 2015**

This bill amends the Civil Practice Law and Rules to add a new Section 1414. This section applies a comparative negligence standard as provided for in CPLR 1411 with respect to actions for personal injury, property damage or wrongful death arising under Labor Law Sections 240 to the extent the conduct relates to the following: a criminal act, use of drugs or alcohol, failure of the employee to use safety devices furnished at the job site, failure to comply with employer instructions regarding the use of safety devices at the job site, or failure of the employee to comply with safe work practices in accord with safety training programs provided by the employer.

Labor Law section 240, also known as the scaffold law, was first enacted in 1885 because of the inherent dangers associated with construction work. The law predates the Occupational Safety and Health Administration, Workers' Compensation Law, state regulations, and best practices that provide rigorous safety protections to workers and rigorous safety requirements on contractors. Labor Law 240 places an absolute liability on contractors, and public and private owners for elevation related injuries, and often resulting in large cash awards to the plaintiff. Indeed, scaffold law claims are among the most common civil actions in New York State, and not surprisingly, because plaintiffs and trial lawyers win them regardless of the facts.

This law is an anachronism that continues to exist at the expense not only of the construction industry, but also the economy and New York's business climate, state and local governments, school districts, small businesses, farms, taxpayers and, well, essentially everyone but the personal injury trial bar.

In 1995, Illinois repealed their version of the "scaffold law" leaving New York as the only state in the nation with such a law. Using the Illinois model, we know that the effect of enacting a comparative negligence standard in New York will result in a significant reduction in the cost of Labor Law 240 related claims while protecting the safety of workers under Occupational Safety and Health Administration Standards. It will also reduce the cost of construction in New York and increase construction employment in New York, a sector which continues to grapple with double-digit unemployment and which lost 17,500 jobs between November 2011 and November 2012, according to the Associated General Contractors of America's analysis of federal employment data.

Insurance costs for the New York City School Construction Authority, the new Tappan Zee Bridge, and other governmental infrastructure projects would be significantly lower with scaffold law reform.

On private sector projects, the scaffold law significantly drives up costs for building construction. Home owners, not-for-profit organizations and businesses share the increased insurance costs related to the scaffold law.

The absolute liability standard and threat of large cash awards to plaintiffs has limited the number of insurance companies willing to provide general liability policies to contractors and drive up public costs in the limited market. Significant savings can be realized and should be reinvested into other vital infrastructure projects that create middle-class construction jobs.

Today's insurance marketplace is under duress with carriers passing along increases ranging from 20% to 400%. Such increases are then passed on to the consumer and drive up the cost on every construction project in New York State. In many cases, the only insurance market open to contractors and subcontractors is the non-admitted lines where exclusions for Section 240 related claims are not uncommon. If not detected, exclusions place owners and general contractors in grave financial danger.

The Scaffold Law has a destructive impact on M/WBE contractors because large cash awards could bankrupt companies and/or significantly increase insurance costs--and because the high insurance premiums that result from the risk associated with this work are a serious barrier to entry for M/WBE firms. Scaffold law reform would accelerate more business opportunities for M/WBE firms.

This bill is a reasonable reform based on the safety record of the impacted contractor or subcontractor. No one in the construction industry would defend unsafe contractors. However, contractors that train, equip and manage their employees safely and conform to all the state-of-the-art safety standards covered by OSHA regulations should at least be able to tell a judge or a jury about the worker's misconduct that caused the injury when a worker is hurt and seeks legal relief. Any basic sense of fairness and justice dictates that in these cases, the facts should matter and individuals not responsible for an injury should not be held liable for it. Unfortunately, under the existing law in New York State, the opposite is true.

Adding a comparative negligence standard to Labor Law Section 240 is the Associated General Contractors of New York State's top priority because it will lower insurance costs for public and private construction projects by limiting large cash awards and would increase the number of insurance carriers in the market, while protecting worker safety under rigorous OSHA standards. It will allow more construction work to be done, strengthen our economy, create more jobs and make sure that the scarce dollars available for our massive public infrastructure needs go toward rebuilding it, not toward jackpot justice lawsuits. **AGC NYS strongly supports and urges the swift passage of S.543/A.3209.**