



**ASSOCIATED GENERAL CONTRACTORS  
OF NEW YORK STATE, LLC**



October 30, 2017

Dear Member of Congress:

This month marks fifth anniversary of the devastation Superstorm Sandy brought to our State.

New Yorkers came together, as they always do in challenging times, to help one another and rebuild. Disaster relief organizations stepped up as well, including groups like Habitat for Humanity. Sadly, their efforts to help our fellow citizens—some of whom lost everything—rebuild their homes and lives were severely hampered by New York’s antiquated and costly “Scaffold Law,” which imposes absolutely liability on both contractors and property owners and public agencies for any gravity-related injury on a construction site. The result is, at best, insurance and therefore construction costs that are significantly higher than in other states—or, at worst, a lack of availability of suitable insurance coverage at all. And, quite simply, if you cannot get insurance, you cannot build.

As Habitat for Humanity of New York President & CEO Judith Nelson wrote in her October 28 letter to the editor of the *Times Union* (enclosed), the Scaffold Law meant that organizations attempting to come to the aid of New Yorkers could not get insurance—and therefore could not help. As Habitat for Humanity New York City CEO Neil Hetherington wrote in his April 22, 2014 letter (enclosed) to the Governor and legislative leaders, **“Make no mistake—the Scaffold Law has directly and significantly hindered organizations’ ability to help hundreds of New Yorkers return home after Superstorm Sandy.”** That this could be allowed to happen because of an unfair, irrational and outdated law is just wrong—and it is an outrage.

Fortunately, legislation has been introduced by Congressman John Faso that would correct this injustice. The Infrastructure Expansion Act of 2017 (H.R. 3808) would replace the Scaffold Law’s unfair, only-in-New York absolute liability standard with comparative negligence, the same standard that applies to every other type of liability in New York and in America, on any project receiving federal funding. With FEMA funding involved, this legislation would have meant more help would have been available for Sandy victims. This legislation would preserve the right of injured construction workers to sue, recognizing the unique and dangerous nature of their work, but would give everyone their day in court. By doing so, it would insure that those responsible for an injury are held accountable—and it would single out and penalize unsafe contractors and owners while protecting those who do the right thing by investing in and focusing on safety and creating safe jobsites. It would enhance construction site safety, not undermine it.

Congressman Faso's legislation would also mean that every dollar of federal funding and assistance that came to New York would have gone farther, with less of it wasted on the excessive liability and insurance costs driven by the Scaffold Law. The same would hold true for federal support critical priorities like roads, bridges, transit and affordable housing.

I urge you to support H.R. 3808 and add your name as a co-sponsor of this bill. I ask you to stand with disaster relief organizations, farmers, small businesses, our local governments, minority and women-owned businesses and the many others who are crying out for reform of this outdated and manifestly unjust law. Please help New York take a significant step toward improving our economy, reducing our local property tax burden and rebuilding our infrastructure and communities by supporting this reasonable, commonsense legislation.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'M. J. Elmendorf II', followed by a long horizontal flourish.

Michael J. Elmendorf II  
President & CEO  
Associated General Contractors of New York State

Enclosures



**← PERSPECTIVE**

Letter: Scaffold Law hinders Habitat for Humanity

# Letter: Scaffold Law hinders Habitat for Humanity

## TO THE EDITOR

I was greatly disappointed to read the Times Union editorial against the bipartisan effort to reform the Scaffold Law ("An attack on worker safety," Sept. 24). The editorial characterized our reform efforts as about "fattening the profits of the construction and real estate industries." As president of the nonprofit Habitat for Humanity of New York state, I want to be clear that our support for reforming the Scaffold Law is not about profit, and that reform will not endanger workers.

After Superstorm Sandy, our volunteer partners struggled to find insurance. Since the Scaffold Law holds contractors and property owners 100 percent responsible even if they were only 1 percent at fault, most insurers will not write policies in

New York — the only state where this law exists. Many disaster relief and affordable housing projects flounder due to the inability to find coverage — coverage that is widely available in every other state.

Further, the Times Union falsely suggests reform would "compromise workers' safety." A report deemed "practice ready" by the Transportation Research Board at the National Academies showed the presence of the law corresponds with an increase in the rate of fatal and non-fatal injuries.

Habitat for Humanity and our volunteer partners strive to create a safe environment for our staff, contractors and volunteers. The Scaffold Law has hindered our efforts to build in New York and should be reformed. The Times Union editorial board should support

Congressman John Faso's effort and the efforts of state legislators on behalf of worker safety, on behalf of civil justice and on behalf of all New Yorkers who struggle to find affordable housing.

Judith Nelson

*President and CEO, Habitat for  
Humanity of New York  
Endicott*





April 22, 2014

Dear Governor Cuomo, Assembly Speaker Silver, Majority Leader Skelos and Majority Leader Klein:

Under your collective leadership, the State of New York strongly responded to the disaster of Superstorm Sandy. With your support, millions in public funds were allocated to relocate families displaced by the storm, rebuild our communities, and prevent future disasters.

Habitat for Humanity New York City continues to help rebuild the areas of New York affected by Superstorm Sandy. We and our fellow not-for-profit and volunteer driven homebuilding organizations have provided similar support all across the country in the wake of hurricanes, floods, tornadoes and other natural disasters. Nationwide, Habitat for Humanity affiliates have helped thousands of families recover from these disasters and will continue to do so in the months and years to come.

While every area has its challenges, the State of New York has presented rebuilding organizations with a unique challenge which has prevented many professionals and volunteers from providing effective relief to New Yorkers affected by Superstorm Sandy.

**Many of our fellow non-profit recovery organizations have struggled to obtain necessary insurance coverage due to the availability crisis driven by Labor Law 240/241, also known as the "Scaffold Law."** After long and time-consuming searches for insurance coverage, the few policies they have found are several times the cost of coverage in any other state, including other states affected by Superstorm Sandy, like New Jersey and Connecticut.

While Habitat for Humanity New York City is an exception to the rule due to our inclusion in a national insurance policy overseen by Habitat for Humanity International, for many of our fellow homebuilders, the cost of construction insurance in New York is prohibitive, and **several disaster relief organizations are unable to provide relief to New York families because of the lack of insurance due to the Scaffold Law.**

This cost and availability crisis is exclusive to New York, as is the Scaffold Law. This is not an insurance problem; it is a New York problem. Our partners enjoy strong and productive relationships with their insurance carriers in all other 49 states, but most of those carriers will not write policies in New York due to the presence of the Scaffold Law. And there is a very large risk that in the future, the law may affect insurance coverage for Habitat affiliates both within the state and across the country should reform not be passed

**Make no mistake – the Scaffold Law has directly and significantly hindered organizations' ability to help hundreds of New Yorkers return home after Superstorm Sandy.** Now more than ever, we cannot afford to waste scarce resources on regulatory burdens and inefficiency.



We respectively urge you to pass meaningful, common sense reform to the Scaffold Law, making comparative negligence apply in cases of intoxication, safety violation, or the commission of a crime. Put New York in line with the rest of the country, so that we may all be able to help rebuild the State.

Too many families are still displaced. Inaction is no longer an option. Pass reform to the Scaffold Law this session so that all our organizations may provide New York with the help and support needed to rebuild.

Respectfully,

A handwritten signature in blue ink, appearing to read "Neil Hetherington".

Neil Hetherington  
Chief Executive Officer  
Habitat for Humanity New York City

Cc: Jerome M. Hauer, Ph.D., MHS - New York State commissioner of The Division of  
Homeland Security & Emergency Services

New York State Assembly Committee on Volunteer Emergency Services Members

New York State Senate Committee on Housing, Construction and Community  
Development

Matthew Dunbar, Associate Director – Government Relations & Advocacy, Habitat for  
Humanity New York City