

ASA of California Celebrates Victory on New Retention and Indemnity Limits

On Oct. 9, California Gov. Jerry Brown (D) signed into law ASA of California-supported bills — S.B. 293 and S.B. 474 — that will provide welcome relief to construction subcontractors in the state and may even help some stay in business.

The new laws ultimately will help improve cash flow for, and limit unfair transfer of risk to, the state's construction subcontractors.

"California construction subcontractors scored a crucial legislative victory," said ASAC President Santo Pernicano, Area-West Fence Company, Lakeside, Calif. "In today's tough economic environment, reforms were urgently needed that improve cash flow and protect subcontractors from unfair risk transfer.

S.B. 293 caps retention at 5 percent on state and local public contracts entered into between Jan. 1, 2012, and Jan. 1, 2016. Because state law prohibits a prime contractor from retaining more from a subcontractor than the owner retains from the prime, the new law's effect is a 5 percent cap on funds that can be retained from subcontractors on state and local public projects. The new law (Chapter 700, Statutes of 2011) also improves the state's prompt payment law by requiring upper-tier contractors on public projects to pay lower-tier contractors within seven days of receiving a progress payment. Previously, upper-tier contractors had 10 days to pay.

S.B. 474 establishes a proportionate, or comparative, liability standard that holds each party responsible only for the damage it causes and its defense costs for that damage. The new law improves California's existing statute, which — when other parties are not solely at fault — allows subcontractors to be held responsible for 100 percent of the injuries, damages and defense costs arising from the other parties' mistakes. The new law (Chapter 707, Statutes of 2011) applies to public and private construction contracts entered into on or after Jan. 1, 2013.

"Construction subcontractors pay their laborers, provide their services and mobilize their equipment for projects long before they receive a penny," said 2011-12 ASA President Kerrick Whisenant, Cornerstone Detention Products Inc., Tanner, Ala. "It is imperative that they be paid on time for the work they perform. Subcontractors also are often unfairly required to take legal responsibility for others' mistakes on a construction project. Thanks to ASA of California, subcontractors in the state will see improvements in retention, prompt payment and risk transfer."

Founded in 1966, ASA amplifies the voice of, and leads, trade contractors to improve the business environment for the construction industry and to serve as a steward for the community. ASA's vision is to be the united voice dedicated to improving the business environment in the construction industry. The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, and integrity and membership diversity.