

July 1, 2007

## **Law Supported by ASA of Tennessee Will Free Up Millions for Construction Industry**

Source: American Subcontractors Association

The Tennessee construction industry will benefit from millions of dollars in project earnings made available to contractors and subcontractors during the course of projects because of a law (Public Chapter 201) enacted in May 2007 with the support of the American Subcontractors Association of Tennessee (ASATN). Gov. Phil Bredesen (D) signed H.B. 1003 on May 22. **The law, which will take effect July 1, 2007, will limit retainage on all public and private construction projects in the state (of Tennessee) to 5%, while requiring that retained funds be kept in interest-bearing escrow accounts. It also will require release of retainage by construction owners, contractors and subcontractors within specific time frames.**

The practice of "retainage" creates cash flow problems for many contractors and subcontractors by allowing construction owners and higher-tier contractors to hold an amount (usually a predetermined percentage) of the progress payments owed to contractors and subcontractors until late into, or after, projects. Retainage is held without regard to a contractor's or subcontractor's performance on a project. Some contracts stipulate as much as 15 or 10% retainage, and often retained funds are not released for months after a contractor or subcontractor has completed its work. A contractor or subcontractor with a \$1 million contract and 10% retainage might not be paid the \$100,000 in retainage owed to it for months.

The new law's required reduction of retainage to 5% means that the same contractor or subcontractor would be paid \$50,000 more during the project lifecycle instead of at the end of or after the project — \$50,000 that it could use to pay managers/laborers, purchase materials, purchase/rent equipment, or re-invest in the company. Multiplied over Tennessee's whole construction industry, the savings and benefit created by the law will be in the millions of dollars.

**The law also addresses late payment of retainage, which causes cash flow problems. It will require a construction owner to release all retainage to a prime contractor within 90 days after completion of work or substantial completion of a project, whichever occurs first. The law will require prime contractors to pay retainage to subcontractors, and subcontractors to pay sub-subcontractors and suppliers, within 10 days of receipt of retainage held for the work/supplies they provide.**