
SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair

2025 - 2026 Regular

Bill No: SB 1205
Author: Valladares
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Fiscal: Yes
Consultant: Vargas

PUBLIC CONTRACTS: RETENTION: ARCHITECTURE OR ENGINEERING SERVICES

Prohibits retention payments for certain contracts between a public entity and an entity that provides design services from exceeding 5% of the payment.

Background

Contracting. The Local Agency Public Construction Act generally requires local agencies to invite bids for construction projects and award contracts to the lowest responsible bidder. Local agencies typically use the traditional design-bid-build method for constructing public works. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. Once project designs are complete, local agencies invite bids from the construction community and award the contract to the lowest responsible bidder. Over the last couple of decades, legislators have gradually expanded local agencies' authority to procure construction projects using various alternatives to the design-bid-build project delivery method.

Retention Cap. Public agencies in California can withhold a percentage of a contract which allows the public agency to maintain some control over the project and ensure that the contractor performs the work, on time, and within a budget. Prior to 2011, state law allowed a public agency to retain no less than 5% from the contractor until the project was completed; the usual standard for public entities was 10%. This was not set by statute. In 2011, the Legislature enacted SB 293 (Padilla) which capped the percentage that could be withheld to 5%.

By limiting the amount of payment withheld, the cap helps ensure these businesses maintain sufficient cash flow to meet ongoing obligations, including payroll, employee benefits, material costs, and applicable taxes. This financial stability enables contractors to continue bidding on future public works projects without relying on costly lines of credit or operating under uncertain financial conditions. Absent the retention cap, contractors may face constrained cash flow and heightened financial risk, limiting their ability to remain viable.

The only exception to the 5% retention limit applies when a public entity deems that a project is substantially complex at a properly noticed and regularly scheduled public meeting held before bidding out the project. Determining whether a project is substantially complex, for purposes of requiring retention more than 5%, must be analyzed and approved on a project-by-project basis. The finding and the designated retention amount must be included in the project's bid documents. In such cases, retention proceeds may exceed the 5% retention cap.

While a 5% retention cap is an established policy standard for construction projects, no equivalent statutory limit exists for professional services contracts, including those for architects and engineers. As a result, public agencies retain broad discretion in setting retention amounts for design services. This can cause financial strain on design firms, particularly smaller entities with limited cash flow. In addition, the timing of retention release by public agencies for design services is often inconsistent and, in some cases, delayed until completion of the overall project. Because construction timelines may extend over several years, design firms may not see their retention funds returned for several years.

The author wants to establish a 5% retention cap for design services.

Proposed Law

Senate Bill 1205 provides that, in design-bid-build contracts between a public entity and a firm authorized to practice architecture or engineering, retention payments must not exceed 5% of the payment. SB 1205 also requires any retention withheld to be released no later than 60 days upon completion of the entity's design services, even if construction of the project has not been completed.

SB 1205 also defines its terms.

Comments

1. Purpose of the bill. According to the author, "California relies on architects to design safe, resilient, and innovative public infrastructure. Yet under current practice, many architects are forced to wait years to receive full payment for work they completed long before construction is finished.

SB 1205 ensures that payment practices reflect the realities of professional services, not construction risk. By eliminating unnecessary retention requirements for architects, this bill supports small businesses, improves cash flow, and promotes a more efficient and equitable public contracting system."

2. Trade-offs. Retention fees on design services provide public agencies financial assurance that consultants fully complete their work and remain accountable after deliverables are submitted. Because design services can have significant impacts down the line during construction, including errors or omissions that may result in costly change orders, project delays, or inspection failures, retention fees can serve as leverage for public agencies to ensure designers or architects correct deficiencies and remain responsive during construction. It also helps protect public agencies in case there are disputes, claims, or failures to meet contractual obligations. On the other hand, retention on design services also reduces cash flow for firms which view their work as substantially complete since they submit their designs prior to the start of construction. SB 1205 reflects on a balance between minimizing a financial strain on design firms and protecting public agencies.

3. Incoming! The Senate Rules Committee has ordered a double referral of SB 1205: first to the Committee on Governmental Organization, which approved the bill at its April 14th hearing on a vote of 15-0, and second to the Committee on Local Government.

Support and Opposition (4/17/2026)

Support: American Council of Engineering Companies of California

Opposition: None Submitted

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