



practices reflect the realities of professional services, not construction risk. This bill supports small businesses, improves cash flow, and promotes a more efficient and equitable public contracting system.

This bill is sponsored by the American Institute of Architects, California, and supported by the American Council of Engineering Companies of California.

- 2) **Retention Proceeds.** For a construction project, retention proceeds are monies a contractor has already earned, but does not receive, until final completion of a project after all work is accepted. Existing law generally limits the allowable retention proceeds that a public entity may withhold on a public works project to 5% of the payment, but allows a higher retention rate if the public entity determines prior to the bid that the project is substantially complex and requires a higher retention rate. Lower retention rates benefit contractors, as increased payments improve cash flow and financial flexibility, but diminish the ability of the contracting agency to use retention as leverage to incentivize completion of difficult projects or remedy defective or non-conforming work, potentially affecting the agency's ability to complete the project in a timely manner.

While this 5% cap on retention proceeds applies to public works construction projects, there is no equivalent statutory cap on retention proceeds applicable to professional services contracts, such as contracts for architecture or engineering services. As a result, public entities retain broad discretion in setting retention payment amounts and dates for design services. This bill similarly establishes a 5% cap on retention proceeds for architecture or engineering services provided under a design-bid-build contract and requires such payments be released no later than 60 days upon completion of the firm's contractual services, regardless of whether subsequent project construction is complete. However, this bill does not provide a similar mechanism for a public entity to set a higher retention rate if the public entity deems the design project to be substantially complex.

- 3) **Related Legislation.** AB 1885 (Carrillo) reduces the amount of retention proceeds certain state agencies may withhold, from 5% to 3.5%, from a progress payment to certain contractors on a public works project. AB 1885 was held on this committee's suspense file.

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