SENATE THIRD READING
SB 1205 (Valladares)
As Amended August 21, 2026
Majority vote

SUMMARY

This bill would impose requirements for a retention payment for contracts under design-bid-build between a public entity and an architecture or engineering firm, except for specific projects, as described.

Major Provisions

1) Provides for contracts under design-bid-build, and amendments thereto, entered into on or after January 1, 2027, directly between a public entity and a firm, any retention payments to the firm for services shall not exceed 5% of the payment.

2) Provides the retention proceeds withheld from any payment to a firm by an awarding entity, as described, may exceed 5% on specific projects for which the director of the department has made a finding prior to the bid that the project is substantially complex and therefore requires a retention amount higher than 5% and the department includes in the bid documents details explaining the basis for the finding and the actual retention amount.

3) Provides the retention proceeds withheld from any payment to a firm by the awarding entity of public entity, as described, may exceed 5% on specific projects where the governing body of the public entity or designee, as defined, has approved a finding, on a project-by-project basis, during a properly noticed and normally scheduled public hearing, and prior to the bid, that the project is substantially complex and therefore requires a retention amount higher than 5% and the awarding entity includes in the bid documents details explaining the basis for the finding and the actual retention amount.

4) Provides any finding by a public entity that a project is substantially complex shall include a description of the specific project and why it is a unique project that is not regularly, customarily, or routinely performed by the agency or licensed contractors.

5) Requires that any retention withheld shall be released no later than 60 days upon completion of the firm's design services under contract, regardless of whether the project for which the services were provided has been completed.

6) Defines "firm" to mean an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

7) Defines a "public entity" to mean a list of state entities, including each state agency, department, or commission, the California State University, the University of California, and a list of local entities, such as a city, special district, or public authority.

COMMENTS

Background.

Design-Bid-Build. Design–bid–build (DBB) is a construction project delivery method in which a project is completed through three distinct, sequential phases: design, bidding, and construction. In California, DBB is considered the traditional project delivery method and is commonly used for public infrastructure projects.

Under the DBB method, the owner hires a design professional (architect or engineer) to prepare complete plans and specifications. After the design is finalized, the project is advertised for competitive bidding. Once a contractor is selected and the contract is awarded, the contractor constructs the project in accordance with the plans and specifications.

Once the design is finalized, the project moves into the bidding phase, where contractors submit competitive bids based on those plans, and the owner usually selects the lowest responsible bidder. After a contractor is chosen, the project enters the construction phase, during which the contractor builds the project according to the completed design. This method is widely used because it provides a clear structure, defined roles, and a transparent bidding process that can help control costs.

Retention Cap. In 2012, California made sweeping changes to its retention laws on public works projects. These changes (Public Contract Code sections 7200, et. seq.) have impacted how contractors are able to deal with retention and when retention is to be paid. Previously, public agency owners and original (i.e., general) contractors had discretion as to the amount of retention they could withhold on a public works project. Under most situations, the parties negotiated to withhold 10% in retention of the contract amount until completion. The withholding of 10% from progress payments was commonly viewed as reasonable and a necessary incentive for the original contractors and subcontractors to complete their respective scopes of work on time. However, under California's current retention laws, these parties no longer have such discretion.

SB 293 (Padilla), Chapter 700, Statutes of 2011, limited the allowable withholding percentage to 5%. The bill included a five-year sunset provision, which was later extended through subsequent legislation. Specifically, for public works contracts entered into on or after January 1, 2012, public agency owners, original contractors and subcontractors were required to withhold no more than 5% retention. With respect to subcontracts, the amount of withheld retention cannot exceed the amount specified in the contract between the original contractor and the owner.[1]

Many original contractors and subcontractors welcome reduced retentions, as a lower retention percentage improves cash flow and enhances financial flexibility. Increased cash flow can be especially beneficial when contract margins are thin or when there are unpaid claims for extra work.

AB 2173 (Petrie-Norris), Chapter 121, Statutes of 2022, removed the prior legislative sunset date and made permanent the statute that limited the amount of retention that a public entity may withhold on public works projects from construction contractors to no more than 5% of the public works contract, unless the director of the applicable department has made, or the governing body of the public entity or designated official of the public entity makes a finding prior to bidding that the project is "substantially complex" and requires the withholding of more

[1] https://www.smtdlaw.com/how-californias-retention-laws-on-public-works-projects-impact-project-completion/

than 5%. This was accomplished by amending Section 7201 and Section 10261 of the Public Contract Code (PCC).

It should be noted that the federal government and Caltrans adhere to 'zero percent' retention policies under SB 197 (Beall) Chapter 842, Statutes of 2019, paying one hundred percent for work completed and accepted. Under this framework, agencies rely on performance bonds and retain the right to withhold necessary amounts from progress payments for any work in dispute. The Federal Acquisition Regulation (FAR) 32.103 states; "retainage should not be used as a substitute for good contract management, and the contracting officers should not withhold funds without cause." The prohibition on Caltrans holding retainage can be found in PPC Section 7202. In addition, cities and counties using design-build and other alternative construction delivery methods are allowed to hold no more than 5% retention on contractors.

According to the Author
The author states, "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. This bill supports small businesses, improves cash flow, and promotes a more efficient and equitable public contracting system."

Arguments in Support
The American Council of Engineering Companies of California writes, "This bill aligns with this policy by reinforcing a 5% on retention for contracts involving design professionals working with public agencies. It also supports timely release of any retained funds, ensuring payments are issued within 60 days after completion of services."

This bill is also supported by the American Council of Engineering Companies of California.

Arguments in Opposition
None on file.

FISCAL COMMENTS

According to the Assembly Committee on Appropriations analysis, "Likely absorbable costs to impacted state and local entities to adjust retention payment rules."

VOTES

SENATE FLOOR: 33-0-7
YES: Archuleta, Arreguín, Ashby, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Ochoa Bogh, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
ABS, ABST OR NV: Allen, Alvarado-Gil, Becker, Hurtado, Niello, Padilla, Stern

ASM GOVERNMENTAL ORGANIZATION: 18-0-3
YES: Blanca Rubio, Davies, Alvarez, Berman, Bryan, Dixon, Fong, Gabriel, Gipson, McKinnor, Nguyen, Pacheco, Ramos, Michelle Rodriguez, Solache, Soria, Ta, Wallis
ABS, ABST OR NV: Carrillo, Macedo, Valencia

ASM APPROPRIATIONS: 11-0-4
YES: Wicks, Arambula, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache
ABS, ABST OR NV: Hoover, Dixon, Ta, Tangipa

UPDATED

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