



## Governor Signs AB 2173 Making 5% Public Works Retention Permanent

On July 19, 2022, [Governor Gavin Newsom signed AB 2173](#) thereby making permanent the 5% retention cap on public projects originally enacted by SB 93 in 2011.

MCAC requested the Governor's signature in a [July 12, 2022 letter](#).

### Background:

- SB 293 (2011) capped public works retentions at 5% (from 10%) until January 1, 2016 and reduced the timeline of private and public progress payments from 10 to 7 days (no sunset date on the progress payments timeline).
- Then, AB 1705 (2014) came along and extended the public works 5% maximum retention withholding until January 1, 2018.
- Later, AB 92 (2017) extended the public works 5% maximum retention withholding until January 1, 2023.
- Now, we can enjoy the stability AB 2173 provides on public retentions.

Of course, there are exceptions to the rule that allow retention withholdings to exceed 5% including:

- Subcontractor cannot or refuses to provide a performance and payment bond issued by an admitted surety insurer (Note: subcontractor must receive written notice of the bond requirements prior to or when bid is requested).
- Project is deemed "substantially complex" by the awarding entity and the bid documents detail the basis for the finding and the actual retention amount.

[AB 2173 text](#)