

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 1494

H.P. 1107

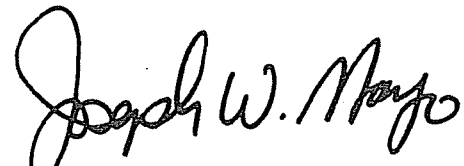
House of Representatives, May 12, 1993

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**An Act to Require the Utilization of an Owner's Representative on State  
Government Construction Contracts.**

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Reference to the Committee on State and Local Government suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative CAMPBELL of Holden.

Cosponsored by Representatives: AHEARNE of Madawaska, BRUNO of Raymond, CAMERON of Rumford, CARROLL of Gray, COFFMAN of Old Town, DEXTER of Kingfield, DiPIETRO of South Portland, GOULD of Greenville, GRAY of Sedgwick, JACQUES of Waterville, KERR of Old Orchard Beach, KUTASI of Bridgton, LEMONT of Kittery, MICHAEL of Auburn, MORRISON of Bangor, NORTON of Winthrop, PLOURDE of Biddeford, PLOWMAN of Hampden, ROBICHAUD of Caribou, SIMONEAU of Thomaston, TARDY of Palmyra, TOWNSEND of Canaan, VIGUE of Winslow, YOUNG of Limestone, Senators: KIEFFER of Aroostook, MARDEN of Kennebec, O'DEA of Penobscot.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §1753 is enacted to read:

**§1753. Employment of owner's representative**

An owner's representative must be employed or assigned to facilitate the construction of a public work under this chapter, the construction of a school project under Title 20-A, chapter 609, a construction project undertaken by a state department or agency or a construction project undertaken by a local unit of government if more than 50% of the funds for that project are provided by the State. For purposes of this section, "owner" means the department, agency, school building committee or unit of government that undertakes the project.

**1. Representative's relationship to owner.** The owner's representative may be an employee of the Bureau of Public Improvements, an employee of the owner or an independent contractor. In any case, the owner's representative's sole loyalty and duty is to the owner, and the owner's representative has a fiduciary duty to the owner to see that the project is completed at the lowest possible cost and highest degree of quality and workmanship that are consistent with the plans and specifications for the project. It is the owner's representative's responsibility to facilitate open communications among all parties, to help to avoid adversarial interactions and to promote a sense of trust and teamwork in order to accomplish the smooth execution of the project.

**2. Representative's responsibilities.** The responsibilities of the owner's representative are, without limitation, to:

A. Prepare for and attend meetings with the owner or a committee representing the owner; prepare minutes of those meetings; maintain a noncommercial history of the building project; submit comments on the budget for the project; and maintain project files;

B. Provide guidance to the owner in the selection of an architect or an engineer, or both, for the project by assisting in the interview and selection process, by assisting in the definition of the scope of design services, by reviewing the architect's or engineer's previous projects through a comparison of the estimated costs to bid and final costs and a review of the completeness of the design, plans and specifications and change orders attributable to deficiencies in those documents, by providing advice on the appropriate fees and time requirements for the services to be rendered and by assisting in the preparation of any design service agreements;

- 2           C. Attend a preplanning orientation with the owner,  
3           architect and engineer;
  
- 4           D. Attend and participate in meetings with the owner,  
5           architect and engineer concerning space requirements, design  
6           considerations, cost-containment strategies, energy  
7           efficiency considerations and any special requirements; and  
8           concerning review of schematic designs and preliminary and  
9           final plans;
  
- 10          E. Assist the owner in securing any necessary governmental  
11          permits or approvals;
  
- 12          F. Assist the owner in reviewing bid responses;
  
- 13          G. Assist the owner in any required contract negotiations;  
14          and
  
- 15          H. Meet with the owner regularly to review and discuss  
16          project progress and represent the owner's interest by:  
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18                (1) Determining in cooperation with the owner and the  
19                architect or engineer the need for on-site monitoring  
20                by an on-site representative of the architect or  
21                engineer, on either a full-time or part-time basis;  
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23                (2) Assisting in the approval of the selection of the  
24                on-site representative, if one is necessary;  
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26                (3) Attending the owner at all construction meetings;  
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28                (4) Reporting in writing directly to the owner on a  
29                weekly or biweekly basis regarding the general progress  
30                and quality of the work, pending problems, proposed  
31                changes and the overall status of the project;  
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33                (5) Providing advice and assistance to the owner in  
34                the resolution of questions regarding interpretation of  
35                specifications and drawings;  
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37                (6) Reviewing pending field orders for the owner and  
38                issuing approvals when warranted;  
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40                (7) Reviewing pending change orders and offering  
41                recommendations to the owner concerning approval or  
42                rejection of those orders;  
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44                (8) Attending, when required, meetings regarding  
45                project-related contractor and subcontractor relations  
46                and job coordination;  
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- 2           (9) Reviewing with the architect or engineer any  
4           proposed substitution of significant material or  
          equipment and approving or making recommendations to  
          the owner concerning the proposed substitutions;
- 6           (10) Reviewing all requisitions for payment submitted  
8           by the contractor and approving requisitions prior to  
          payment by the owner;
- 10          (11) Reviewing all invoices for architect or engineer  
12          services involved with the project and approving  
          invoices prior to payment by the owner;
- 14          (12) Coordinating the resolution of any job site  
16          problems involved with local authorities, adjacent  
          businesses or local activities;
- 18          (13) Negotiating any differences that may occur  
20          between the architect or engineer and the contractor  
          regarding execution of the work;
- 22          (14) Visiting the construction site at least twice  
24          weekly during the construction phase;
- 26          (15) Working with the architect or engineer to obtain  
28          accurate shop "record" drawings incorporating changes  
30          from the original drawings to assure an accurate  
          representation of construction detail for future  
          reference together with warranties and operating  
          manuals.

32          The owner may expand or reduce the scope of the owner's  
34          representative's responsibilities by execution of a contract with  
36          the owner's representative setting out differing  
          responsibilities, so long as the differing responsibilities  
          conform to the overall relationship established in subsection 1.

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### STATEMENT OF FACT

42           This bill requires state agencies and school districts to  
44           employ an owner's representative to facilitate the smooth  
46           completion of public works projects. Local units of government  
          are also required to employ an owner's representative if the  
          State is providing more than 50% of the funding for a project.

48           The owner's representative is charged with working with the  
50           owner, architect, engineer and general contractor in a  
          cooperative manner to avoid unnecessary problems and to resolve  
          problems that occur in a nonadversarial manner.