

# MAINE STATE LEGISLATURE

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April 15, 2011

Representative John Martin  
2 State House Station  
Augusta, ME 04333

Dear Representative Martin:

This letter is in response to your inquiry about my office's recent comments to the Joint Standing Committee on Labor, Commerce, Research and Economic Development about Senator Jackson's bill, LD 340, *An Act Regarding Timber Harvesting on State Land*.

At your request, our office re-reviewed the language of LD 340 and we continue to believe that it is unconstitutional as it presents preemption and equal protection issues under the United States Constitution. As previously conveyed to the committee:

LD 340 prohibits foreign workers who have been federally certified to work in the timber industry from working on Maine public lands. The federal program generally contemplates that foreign workers can only be certified if "(1) the employer has not offered foreign workers higher wages or better working conditions (or less restrictions) than that offered to U.S. workers, and (2) U.S. workers are not available for the employer's job opportunities." 20 CFR 655.200(b). There is a rather elaborate process for an employer to obtain this certification. The federal certification presents both a preemption and equal protection problems for this bill. While the courts have allowed states to ban aliens from certain occupations – such as police officers – there seems to be no basis upon which to ban federally certified workers, particularly where the certification is based upon the unavailability of U.S. workers.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'William J. Schneider'.

William J. Schneider  
Attorney General

cc: Senator Troy Jackson