

# MAINE STATE LEGISLATURE

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SMG  
[Handwritten initials and a circular stamp]

Date: 4-7-10

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STATE OF MAINE  
SENATE  
124TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 593,  
L.D. 1545, Bill, "An Act To Protect Maine Workers"

Amend the amendment by striking out all of section 4 and inserting the following:

'Sec. 4. 26 MRSA §872, sub-§2, as amended by PL 2009, c. 381, §1, is further amended to read:

2. **Proof of ownership required.** An employer in this State who employs applies for a bond worker in a logging occupation shall provide proof of the employer's ownership of any logging equipment used by that worker in the course of employment, including proof of ownership of at least one piece of logging equipment for every 2 bond workers employed by the employer in a logging occupation. The employer shall provide proof of ownership as required by this subsection on a form provided by the Commissioner of Labor. The proof required by this subsection must include, but not be limited to, a receipt for payment for the equipment purchased in a bona fide transaction and documentation of payment of any tax assessed on the equipment pursuant to Title 36, chapter 105 for the year in which the bond worker is employed by the employer. Proof of ownership must be carried in the equipment and, upon request by the department, the operator of equipment subject to this section shall provide proof of ownership. Notwithstanding section 3, information regarding proof of ownership is not confidential and may be disclosed to the public. If the equipment is leased by the employer, the employer shall provide the name, address and telephone number of the leasing company and its affiliates and subsidiaries; the names, addresses and telephone numbers of the leasing company's owner or owners, its agent and members of its board of directors; and a copy of the lease document. A lease is sufficient to meet the ownership requirement of this section only if it is a bona fide lease and:

A. The lease consists of an arm's length transaction between unrelated entities or is a transfer of equipment between affiliated companies;

B. The lease document contains a specific duration and lease amount;

C. The lessor is not an entity owned or controlled by a bond worker or a bond worker's spouse, parent, child, sibling, aunt, uncle or cousin or person related to a bond worker in the same manner by marriage, or by any combination of a bond worker and the bond worker's family members described in this paragraph; and

1 D. The lessor is a bona fide leasing business as evidenced by a lease of logging  
2 equipment to at least 3 different, unrelated entities within each of the past 3 years.'

3 Amend the amendment in section 5 in subsection 2-A by adding at the end the  
4 following: 'An employer shall notify the Maine Department of Labor within 3 days of the  
5 date on which a bond worker begins work in the State and shall specify the name of the  
6 bond worker and where the bond worker will be conducting work.'

7 Amend the amendment by inserting after section 9 the following:

8 'Sec. 10. 26 MRSA §873 is enacted to read:

9 **§873. Recruitment for logging occupations**

10 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
11 following terms have the following meanings.

12 A. "Bond worker" has the same meaning as in section 872.

13 B. "Recruitment clearinghouse" or "clearinghouse" means a system operated by  
14 members of the forest products industry and described in subsection 3.

15 **2. Employer requirements; clearinghouse and reporting.** An employer filing for  
16 certification with the United States Department of Labor to hire a bond worker in a  
17 logging occupation shall:

18 A. File a copy of all federal forms and reports relating to H2 visas with the Maine  
19 Department of Labor at the same time as the employer files the form or report with  
20 the United States Department of Labor; and

21 B. Be a member and active participant of a recruitment clearinghouse that complies  
22 with subsection 3. The Maine Department of Labor may consider failure to  
23 participate in the clearinghouse as failure to participate in good faith recruitment of  
24 workers who are citizens of the United States and a failure to meet the requirement  
25 that the employer accept qualified workers referred through the department under  
26 subsection 5.

27 **3. Clearinghouse requirements.** The Maine Department of Labor shall assist  
28 members of the forest products industry in establishing the recruitment clearinghouse,  
29 which must be financed and operated by members of the forest products industry. The  
30 clearinghouse must provide a centralized, streamlined process for applicants in the forest  
31 products industry.

32 A. The clearinghouse must provide a staffed, toll-free telephone number to receive  
33 telephone inquiries for logging employment.

34 B. For each applicant who contacts the clearinghouse directly or who is referred to  
35 the clearinghouse by the Maine Department of Labor pursuant to subsection 4, the  
36 clearinghouse shall gather any information necessary to assess the job applicant's  
37 qualifications for the job classification applied for, including but not limited to  
38 conducting a reference check. Following the assessment, the clearinghouse shall:

39 (1) Notify the Maine Department of Labor and the applicant that the applicant  
40 lacks sufficient qualifications or satisfactory references for the position sought  
41 and state the reasons for that determination; or

1 (2) Refer the applicant to a logging employer seeking workers in that job  
2 classification. To the extent practicable, the clearinghouse shall refer the  
3 applicant to the applicant's preferred geographic area of employment. Referral  
4 may be made to any employer with relevant job openings, regardless of whether  
5 the employer is seeking bond workers, if the applicant prefers such a referral.

6 **4. Department role.** The Maine Department of Labor shall:

7 A. Refer to the recruitment clearinghouse all applicants who meet minimum  
8 qualifications for employment with a logging employer. The referral must include  
9 information required of applicants who use the department's career center services;

10 B. Keep a record of the name, date of referral, preferred working location and job  
11 classification of each applicant referred to the recruitment clearinghouse;

12 C. Engage actively with the recruitment clearinghouse and with employers to assist  
13 them in understanding how to comply with their obligations under state and federal  
14 law regarding recruitment and hiring of logging workers; and

15 D. Regularly review clearinghouse referrals and assessments and employer response  
16 to referrals in order to make determinations of compliance by employers with the  
17 requirements of 20 Code of Federal Regulations, Part 655, Subpart B. Failure of the  
18 clearinghouse to appropriately refer and assess applicants may be considered failure  
19 of each of the member employers to adequately recruit workers who are citizens of  
20 the United States.

21 **5. Job offer; skills test.** Upon referral of an applicant under subsection 3, a logging  
22 employer shall offer employment to that applicant.

23 A. An employment offer may be conditioned on a skills test, but only if the employer  
24 requires the skills test of all new applicants in that job classification.

25 B. If a skills test under paragraph A is required, it must be conducted at the area of  
26 intended employment, at a central location designated by the recruitment  
27 clearinghouse in conjunction with the logging employer or at another location within  
28 reasonable distance from the applicant's residence.

29 C. A contractor that requires a skills test under paragraph A in the preemployment  
30 hiring process shall submit a copy of the testing policy and procedure to the Maine  
31 Department of Labor at the time the contractor files the position on the state Job  
32 Bank.

33 D. An applicant who is rejected from employment due to failing a skills test under  
34 paragraph A must be given a written statement of the reason for failure of the skills  
35 test. The employer shall provide a copy of the written statement to the recruitment  
36 clearinghouse and the Maine Department of Labor.

37 **6. Contracts with landowners.** A contract for harvesting wood between a logging  
38 employer and a landowner must contain a provision that allows the landowner to  
39 terminate the contract if the logging employer violates this section or the applicable  
40 federal regulations regarding employment of bond workers.

1 7. Penalties. The Maine Department of Labor shall make good faith efforts to  
2 resolve alleged violations of this section or of the recruitment process. If such efforts are  
3 not successful, the following penalties apply.

4 A. Violation of this section is considered a violation of section 872 and is subject to  
5 the penalties as set forth in section 872, subsection 5.

6 B. An employer is subject to discontinuation of services pursuant to 20 Code of  
7 Federal Regulations, Section 658.500 et seq. if the employer fails to comply with this  
8 section or the clearinghouse fails to appropriately refer or assess applicants in the job  
9 classification in which the employer is seeking bond workers.

10 8. Landowner contracts with employers. This subsection governs contracts  
11 between logging employers and landowners.

12 A. The Maine Department of Labor shall maintain an approved list of employers  
13 consisting of those employers filing for certification with the United States  
14 Department of Labor to hire a bond worker in a logging occupation that are members  
15 of and active participants in a recruitment clearinghouse that complies with  
16 subsections 2 and 3. The list must also contain any employer under investigation by  
17 the Maine Department of Labor for a violation of section 872, section 873 or federal  
18 regulations applicable to foreign labor. The department shall publish the list on the  
19 department's publicly accessible website and forward a copy of the list and  
20 subsequent updates to the recruitment clearinghouse. Each landowner or other  
21 person that wishes to be notified of a change in status of a contractor must file with  
22 the department a request to be notified and contact information for the notification.

23 B. The Maine Department of Labor, after notice and hearing, shall remove from the  
24 list of approved employers under paragraph A any employer filing for certification  
25 with the United States Department of Labor to hire a bond worker in a logging  
26 occupation that is found to have committed a material violation of section 872,  
27 section 873 or the applicable federal regulations.

28 C. A person may appeal the placement or removal of an employer on the approved  
29 list under paragraph A to the State Board of Arbitration and Conciliation. If the  
30 appeal relates to removal of the employer from the list, it must be made within 15  
31 days of notice of removal to the employer. The board shall conduct an arbitration  
32 session pursuant to chapter 9, subchapter 2-A. Board proceedings under this section  
33 must be conducted in Augusta, unless the board determines that this location is  
34 impracticable in the specific circumstances. Notwithstanding section 931, the costs  
35 of arbitration under this section must be paid by a nonlapsing fund to be established  
36 by the department.

37 D. The Maine Department of Labor shall notify persons who have filed a request for  
38 notification of the removal of any employer from the list.

39 E. A landowner who enters into or maintains a contract with an employer not on the  
40 approved list under paragraph A is subject to a fine of not more than \$50,000.

41 **Sec. 11. 26 MRSA §874 is enacted to read:**

1 **§874. Fund established**

2 The Foreign Labor Certification Process Fund, referred to in this subchapter as "the  
3 fund," is established. The fund consists of any funds received as grants or other  
4 contributions from private and public sources. The fund, to be accounted within the  
5 Department of Labor, must be held separate and apart from all other money, funds and  
6 accounts. Eligible investment earnings credited to the assets of the fund become part of  
7 the assets of the fund. Any balance remaining in the fund at the end of any fiscal year  
8 must be carried forward to the next fiscal year. The fund may be used to pay expenses  
9 incurred by the Department of Labor in carrying out its functions under this subchapter.'

10 Amend the amendment by inserting after section 11 the following:

11 **'Sec. 12. Appropriations and allocations.** The following appropriations and  
12 allocations are made.

13 **LABOR, DEPARTMENT OF**

14 **Foreign Labor Certification Process Fund N111**

15 Initiative: Provides a base allocation in the event that grants or other contributions from  
16 private and public sources are received.

17	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
18	All Other	\$0	\$500
19			
20	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$500</b>
21			

22 Amend the amendment by relettering or renumbering any nonconsecutive Part letter  
23 or section number to read consecutively.

24 **SUMMARY**

25 This amendment adds language to the laws governing proof of equipment ownership  
26 for employers using foreign laborers requiring that any lease used to demonstrate  
27 ownership must be a bona fide lease and setting forth some of the standards for  
28 determining whether a lease is bona fide.

29 The amendment requires employers of bond workers to notify the Department of  
30 Labor of the name and location of bond workers performing logging work in the State.

31 The amendment requires employers seeking bond workers to form and participate in  
32 a recruitment clearinghouse that assists in evaluating and referring potential logging  
33 occupation workers. The Department of Labor will work with the clearinghouse to  
34 ensure understanding of, and compliance with, recruitment and hiring requirements under  
35 federal regulations and state law.

36 The amendment requires the Department of Labor to maintain a list of contractors  
37 who are seeking to hire bond workers, and to require landowners to hire contractors from  
38 that list. Contractors who violate federal regulations or state law relating to bond workers

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1 must be removed from the list. A landowner who enters into or maintains a contract with  
2 an entity that is not on the list is subject to a fine of up to \$50,000.

3 The amendment establishes the Foreign Labor Certification Process Fund and adds an  
4 appropriations and allocations section.

5 **FISCAL NOTE REQUIRED**

6 (See attached)

7 SPONSORED BY: 

8 (Senator JACKSON)

9 COUNTY: Aroostook



# 124th MAINE LEGISLATURE

LD 1545

LR 2087(06)

## An Act To Protect Maine Workers

Fiscal Note for Senate Amendment "A" to Committee Amendment "A"

Sponsor: Sen. Jackson of Aroostook

Fiscal Note Required: Yes

### Fiscal Note

Undetermined current biennium revenue increase - General Fund  
 Potential current biennium revenue increase - Other Special Revenue Funds

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$0	\$500	\$500	\$500

#### Fiscal Detail and Notes

This amendment establishes a Foreign Labor Certification Process Fund as a nonlapsing dedicated fund within the Department of Labor and provides a base allocation of \$500 in fiscal year 2010-11 in the event that grants or other contributions from private and public sources are received to pay the expenses incurred by the Department while fulfilling the requirements of this legislation.

Penalties assessed by the Department of Labor as a result of this legislation may result in increased revenues to the General Fund. The amount can not be determined at this time.