

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SMG
R. 23.

L.D. 1383

Date: 3-30-12

(Filing No. S-509)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 428, L.D. 1383, Bill, "An Act To Improve the Process by Which Logging Contractors Hire Legal Foreign Workers"

Amend the bill by striking out the title and substituting the following:

'An Act To Promote a Qualified Logging Workforce and Ensure an Adequate Wood Supply for Maine Mills'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 26 MRSA §872, as amended by PL 2009, c. 637, §§3 to 9, is further amended to read:

§872. Proof of equipment ownership for employers using foreign laborers

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

A. "Bond worker" means a person who has been described under 8 United States Code, Section 1101(a)(15)(H)(ii) and granted permission to work temporarily in the United States.

B. "Logging equipment" means equipment used directly in the cutting and transporting of logs to the roadside, the production of wood chips in the field, the construction of logging roads and the transporting of logs or other wood products off-site or on roadways.

2. Proof of ownership required. An employer in this State who 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

1 payment of any tax assessed on the equipment pursuant to Title 36, chapter 105 for the
2 year in which the bond worker is employed by the employer. Proof of ownership must be
3 carried in the equipment and, upon request by the department or its designee, the operator
4 of equipment subject to this section shall provide proof of ownership. If proof of
5 ownership is not provided within 30 calendar days of such a request, a fine of not less
6 than \$5,000 and not more than \$25,000 may be assessed against that employer and
7 collected by the Commissioner of Labor. Notwithstanding section 3, information
8 regarding proof of ownership is not confidential and may be disclosed to the public. If the
9 equipment is leased by the employer, the employer shall provide the name, address and
10 telephone number of the leasing company and its affiliates and subsidiaries; the names,
11 addresses and telephone numbers of the leasing company's owner or owners, its agent and
12 members of its board of directors; and a copy of the lease document. A lease is sufficient
13 to meet the ownership requirement of this section only if it is a bona fide lease and:

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

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

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

21 D. The lessor is a ~~bona fide~~ leasing business as evidenced by a lease of logging
22 equipment to at least 3 different, unrelated entities within each of the past 3 years;
23 and

24 E. The lessor provides proof of payment of personal property tax assessed on the
25 leased equipment.

26 **2-A. Notification.** An employer filing for certification from the United States
27 Department of Labor to hire a bond worker to operate logging equipment shall at the time
28 of filing notify the Maine Department of Labor and provide, for the year in which the
29 bond worker is employed, the number of bond workers requested; a list of each piece of
30 logging equipment, including serial number, a bond worker will operate; receipts for
31 payment for the logging equipment purchased in bona fide transactions; and
32 documentation of payment of any tax assessed on the logging equipment pursuant to Title
33 36, chapter 105. An employer shall notify the Maine Department of Labor within ~~3~~ 30
34 calendar days of the date on which a bond worker begins work in the State and shall
35 specify the name of the bond worker and the anticipated locations where the bond worker
36 will be conducting work and shall provide a copy of the United States Customs and
37 Border Protections entry form for that worker. If the notification is not provided within
38 30 calendar days of the date on which a bond worker begins work, a fine of not less than
39 \$5,000 and not more than \$25,000 must be assessed against that employer and collected
40 by the Commissioner of Labor.

41 **2-B. Violation.** Upon an employer's conviction of a violation of subsection 2, ~~an~~
42 ~~employer may not employ~~ the Commissioner of Labor may prohibit the employer from
43 employing bond workers in this State for 2 years.

1 **3. Equipment covered by federal prevailing wage exempt.** This section does not
2 apply to equipment for which the United States Department of Labor, Division of Foreign
3 Labor Certification has established a prevailing wage under the federal Service Contract
4 Act of 1965 for persons using that equipment.

5 **4. Enforcement; rules.** The Commissioner of Labor shall ~~may~~ adopt rules to
6 implement and enforce the provisions of this section, including rules regarding the receipt
7 of documentation and the investigation and prosecution of employer proof of ownership
8 of logging equipment. Rules adopted pursuant to this subsection are major substantive
9 rules as defined in Title 5, chapter 375, subchapter 2-A.

10 ~~**5. Penalty; enforcement.** An employer who violates subsection 2, 2-A or 2-B or the~~
11 ~~rules adopted pursuant to this section commits a civil violation for which a fine of not less~~
12 ~~than \$10,000 and not more than \$25,000 per violation may be adjudged.~~

13 ~~In the event of a violation of the provisions of this section, the Attorney General may~~
14 ~~institute injunction proceedings in the Superior Court to enjoin further violation of this~~
15 ~~section.~~

16 **6. Assistance.** The Department of Conservation and the Department of
17 Administrative and Financial Services, Bureau of Revenue Services shall provide
18 interagency support and field information to assist the Department of Labor in enforcing
19 this section.

20 **Sec. 2. 26 MRSA §873**, as corrected by RR 2009, c. 2, §§73 and 74, is amended to
21 read:

22 **§873. Recruitment of qualified workers for logging occupations**

23 ~~**1. Definitions.** As used in this section, unless the context otherwise indicates, the~~
24 ~~following terms have the following meanings.~~

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

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

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

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

34 ~~B. Be a member and active participant of a recruitment clearinghouse that complies~~
35 ~~with subsection 3. The Maine Department of Labor may consider failure to~~
36 ~~participate in the clearinghouse as failure to participate in good faith recruitment of~~
37 ~~workers who are citizens of the United States and a failure to meet the requirement~~
38 ~~that the employer accept qualified workers referred through the department under~~
39 ~~subsection 5.~~

40 ~~**3. Clearinghouse requirements.** The Maine Department of Labor shall assist~~
41 ~~members of the forest products industry in establishing the recruitment clearinghouse,~~

1 which must be financed and operated by members of the forest products industry. The
2 clearinghouse must provide a centralized, streamlined process for applicants in the forest
3 products industry.

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

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

11 ~~(1) Notify the Maine Department of Labor and the applicant that the applicant~~
12 ~~lacks sufficient qualifications or satisfactory references for the position sought~~
13 ~~and state the reasons for that determination; or~~

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

19 ~~4. Department role. The Maine Department of Labor shall:~~

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

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

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

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

34 ~~4-A. Department role. The Maine Department of Labor shall:~~

35 ~~A. In addition to enforcing federal requirements imposed by 20 Code of Federal~~
36 ~~Regulations, Part 655, Subpart B, through the Bureau of Employment Services assist~~
37 ~~members of the forest products industry to ensure logging employment opportunities~~
38 ~~for Maine workers, match qualified applicants with logging employers and provide~~
39 ~~such other assistance to logging employers as may be appropriate;~~

40 ~~B. With input from representatives of the forest industry, provide educational and~~
41 ~~training opportunities in order for workers who express an interest in the logging~~
42 ~~industry to obtain necessary skills; and~~

1 C. In conjunction with the Department of Education and representatives of the forest
2 and logging industries, develop an entry-level logger training program with the goal
3 of providing new qualified workers to the logging industry. The training program
4 must include classroom and on-the-job training and must be provided through
5 existing community colleges, technical schools or the University of Maine System
6 whenever practicable.

7 **5. Job offer; skills test.** Upon referral of an applicant ~~under subsection 3~~ by the
8 Maine Department of Labor, Bureau of Employment Services, a logging employer shall
9 may offer employment to that applicant based on the following factors.

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

12 B. If a skills test under paragraph A is required, it must be conducted at the area of
13 intended employment, at a central location designated by ~~the recruitment~~
14 ~~clearinghouse in conjunction with~~ the logging employer, the employer's place of
15 employment or at another location within reasonable distance from the applicant's
16 residence.

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

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

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

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

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

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

38 ~~8. Landowner contracts with employers.~~ ~~This subsection governs contracts~~
39 ~~between logging employers and landowners.~~

40 ~~A. The Maine Department of Labor shall maintain an approved list of employers~~
41 ~~consisting of those employers filing for certification with the United States~~
42 ~~Department of Labor to hire a bond worker in a logging occupation that are members~~

1 ~~of and active participants in a recruitment clearinghouse that complies with~~
2 ~~subsections 2 and 3. The list must also contain any employer under investigation by~~
3 ~~the Maine Department of Labor for a violation of section 872, this section or federal~~
4 ~~regulations applicable to foreign labor. The department shall publish the list on the~~
5 ~~department's publicly accessible website and forward a copy of the list and~~
6 ~~subsequent updates to the recruitment clearinghouse. Each landowner or other~~
7 ~~person that wishes to be notified of a change in status of a contractor must file with~~
8 ~~the department a request to be notified and contact information for the notification.~~

9 ~~B. The Maine Department of Labor, after notice and hearing, shall remove from the~~
10 ~~list of approved employers under paragraph A any employer filing for certification~~
11 ~~with the United States Department of Labor to hire a bond worker in a logging~~
12 ~~occupation that is found to have committed a material violation of section 872, this~~
13 ~~section or the applicable federal regulations.~~

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

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

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

27 **Sec. 3. 26 MRS §874**, as enacted by PL 2009, c. 637, §11, is repealed.

28 **Sec. 4. Logging Industry Advisory Group.** The Department of Labor shall
29 convene and facilitate the Logging Industry Advisory Group to address recruitment,
30 training and educational opportunities for the logging industry. The group shall address
31 recruitment and the matching of qualified applicants, classroom training, on-the-job
32 training, inventory of potential training partners, opportunities for potential training
33 locations and funding sources. The group shall report its findings and recommendations
34 to the department. The department shall report the group's findings to the Joint Standing
35 Committee on Labor, Commerce, Research and Economic Development no later than
36 October 1, 2012.

37 **1. Membership.** The Logging Industry Advisory Group consists of the following
38 members:

39 A. A representative of the Bureau of Labor Standards, appointed by the
40 Commissioner of Labor. This member shall serve as chair;

41 B. A representative of the Bureau of Employment Services, appointed by the
42 Commissioner of Labor;

7. 4. 9.

1 C. A representative of the Department of Conservation, appointed by the
2 Commissioner of Conservation;

3 D. A representative of the Department of Education, appointed by the Commissioner
4 of Education;

5 E. A representative of the Maine Community College System, appointed by the
6 President of the Maine Community College System; and

7 F. A representative of the University of Maine System, appointed by the Chancellor
8 of the University of Maine System.

9 In addition, a representative of the Maine Logger Education Alliance, a representative
10 of a large logging employer and a representative of a small logging employer serve at the
11 invitation of the Governor. The president of the Professional Logging Contractors of
12 Maine is invited to appoint a representative to serve on the group.

13 **Sec. 5. Maine Revised Statutes headnote amended; revision clause.** In the
14 Maine Revised Statutes, Title 26, chapter 7, subchapter 9, in the subchapter headnote, the
15 words "aliens" are amended to read "foreign laborers; logging" and the Revisor of
16 Statutes shall implement this revision when updating, publishing or republishing the
17 statutes.'

18 **SUMMARY**

19 This amendment seeks to provide an adequate, affordable wood supply for Maine
20 mills, ensure sufficient harvest capacity to meet mill and landowner needs and increase
21 availability and employment of qualified workers through the creation of an economically
22 viable, robust logging contractor workforce. It provides a framework to generate interest
23 and educate people to facilitate entrance to the logging trade, ensures that proof of
24 ownership or leasing of equipment and hiring notification occur in a reasonable time
25 frame and simplifies the process for employers in the logging industry who may need to
26 hire bonded workers while maintaining the Department of Labor's ability to effectively
27 enforce these provisions. The amendment eliminates the recruitment clearinghouse
28 requirements and, like the bill, eliminates the Foreign Labor Certification Process Fund,
29 which funded the enforcement of those requirements.

30 **FISCAL NOTE REQUIRED**

31 **(See attached)**



125th MAINE LEGISLATURE

LD 1383

LR 1897(02)

An Act To Improve the Process by Which Logging Contractors Hire Legal Foreign Workers

Fiscal Note for Bill as Amended by Committee Amendment "A" 8-509
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Correctional and Judicial Impact Statements

General Fund revenue from the Judicial Department will be reduced as fines currently collected by the Judicial Department will be collected by the Department of Labor under this bill.

Fiscal Detail and Notes

This legislation will increase General Fund revenue from fines collected by the Department of Labor. The amount will depend on the number of fines assessed but is not anticipated to be significant different.

Additional costs to the Bureau of Labor Standards and the Bureau of Employment Services within the Department of Labor to implement the provisions of this legislation can be absorbed within existing budgeted resources.

Additional costs to the Department of Conservation, the Department of Education, the Maine Community College System and the University of Maine System associated with serving on the Logging Industry Advisory Group can be absorbed within existing budgeted resources.