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Date: (Filing No. S- )

**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 “ ” 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

**COMMITTEE AMENDMENT**

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 MRSA §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;

- 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)**