

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

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

Amend the amendment by inserting after section 9 the following:

‘**Sec. 10. 26 MRSA §873** is enacted to read:

§ 873. Recruitment for logging occupations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 874. Fund established

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

Amend the amendment by inserting after section 11 the following:

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

LABOR, DEPARTMENT OF

Foreign Labor Certification Process Fund N111

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

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$0	\$500
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OTHER SPECIAL REVENUE FUNDS	\$0	\$500

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

SUMMARY

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

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

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

The amendment requires the Department of Labor to maintain a list of contractors who are seeking to hire bond workers, and to require landowners to hire contractors from that list. Contractors who violate federal regulations or state law relating to bond workers must be removed from the list. A landowner who enters into or maintains a contract with an entity that is not on the list is subject to a fine of up to \$50,000.

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

FISCAL NOTE REQUIRED
(See attached)