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An Act To Ensure Public Benefit from Investments in Taxpayer-funded Research

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §13051-A is enacted to read:

§ 13051-A. Provision of benefit to State

1. Reasonable pricing policies. Research and development initiatives under this chapter that are funded all or in part with taxpayer funds that result in a patent or are otherwise commercialized must return or provide a benefit to the State and its citizens by providing the new technology or product at a reasonable price.

2. Retention of interest in patents. The State retains an interest in any patents that result from research funded in whole or in part with taxpayer funding, whether that funding is to the University of Maine System, the Maine Technology Institute or a nonprofit or other corporation or entity.

3. Construction. This section must be interpreted broadly to encompass all research funded by the State.

Sec. 2. 5 MRSA §15301, sub-§5 is enacted to read:

5. Taxpayer funds. "Taxpayer funds" means any state money, including state bond funds.

Sec. 3. 5 MRSA §15301, sub-§6 is enacted to read:

6. Taxpayer-funded research. "Taxpayer-funded research" means research that is funded in whole or in part by taxpayer funds.

Sec. 4. 5 MRSA §15301, sub-§7 is enacted to read:

7. Taxpayer-funded invention. "Taxpayer-funded invention" means any invention conceived or first practically applied based on taxpayer-funded research.

Sec. 5. 5 MRSA §15301, sub-§8 is enacted to read:

8. Pricing. "Pricing" means the pricing of a product or process in the State.

Sec. 6. 5 MRSA §15302, sub-§2, as enacted by PL 1999, c. 401, Pt. AAA, §3, is amended to read:

2. Purpose. The institute, through a public and private partnership, shall encourage, promote, stimulate and support research and development activity leading to the commercialization of new products and services in the State's technology-intensive industrial sectors to enhance the competitive position

of those sectors and increase the likelihood that one or more of the sectors will support clusters of industrial activity, to promote the widest possible use of taxpayer-funded inventions and to create new jobs for Maine people. The institute is one element of the State's economic development strategy and will contribute to the long-term development of a statewide research, development and product deployment infrastructure.

Sec. 7. 5 MRSA §15303, sub-§3, as enacted by PL 1999, c. 401, Pt. AAA, §3, is amended to read:

3. Measures of performance. The institute shall develop quantifiable measures of performance to which it will hold all grantees accountable, including, but not limited to, the number of new jobs created by the grant, the amount of sales generated, the availability and affordability of the technology to the public, the number of patents produced and the amount of corporate income taxes paid, and shall require all grantees to report regularly to the institute on those measures during the grant period and for 5 years following the end of the grant period.

Sec. 8. 5 MRSA §15307 as enacted by PL 1999, c. 401, Pt. AAA, §3, is amended to read:

§ 15307. Prohibited interests of officers, directors and employees

An officer, director or employee of the institute or a spouse or dependent child of any of those individuals may not receive any direct personal benefit from the activities of the institute in assisting any private entity. ~~This section does not prohibit corporations or other entities with which an officer or director is associated by reason of ownership or employment from participating in science and technology activities with the institute if ownership or employment is made known to the board and the officer or director abstains from voting on matters relating to that participation.~~ This prohibition does not extend to corporators who are not officers or directors of the institute.

Sec. 9. 5 MRSA §15312, is enacted to read:

§ 15312. Rules

The institute shall adopt rules necessary to implement the requirements of this chapter. The institute shall adopt rules to establish criteria for reasonable pricing policies for all taxpayer-funded research by October 1, 2008. The rules shall include criteria for waivers of the pricing requirements when the waiver is in the best interest of the public and the institute has provided an opportunity for public comment. The rules regarding waivers must require the institute to balance the State's contribution to the development of the technology, the importance of the technology to the public's health and welfare with the likelihood that consumers will be able to afford the technology if the waiver is granted.

Sec. 10. 5 MRSA c. 407, sub-c. 3 is enacted to read:

SUBCHAPTER 3

reasonable pricing policies

§ 15331. Reasonable pricing policies

1. Public benefit retained in intellectual property. All taxpayer-funded research is subject to the following policies:

A. Licensing agreements for the commercialization of intellectual property will presumptively be nonexclusive; and

B. Any exclusive licensing agreement for the commercialization of intellectual property must include the following language: "The State of Maine has an interest that there be a reasonable relationship between the pricing of a licensed product, the public investment in that product and the health and safety needs of the public. The State of Maine may require that this relationship be supported by reasonable evidence."

2. Reasonable pricing policies established. Reasonable pricing policies apply to all taxpayer-funded research, including, but not limited to, research conducted by or funded by the University of Maine System, the Department of Economic and Community Development and the Maine Technology Institute.

Sec. 11. Study. The Maine Technology Institute Director, referred to in this section as "the director," shall convene a working group to conduct a study and convene at least 4 meetings to develop and gather information necessary to establish reasonable pricing policies for all taxpayer-funded research and make recommendations for changes in state laws and rules to ensure that commercialization and the development of intellectual property from taxpayer-funded research is widely available to the State and its citizens at a reasonable price. The director shall seek to include in the working group representatives from the Department of Economic and Community Development, Office of Innovation; an attorney with the University of Maine School of Law's intellectual property program; consumer advocacy groups; the University of Maine System; and the business community.

The working group has the authority to inspect any agreement that concerns taxpayer-funded research and any agreement to which a public entity or statutorily created corporation is a party, with the proviso that all members are required to keep this information confidential. The working group shall review the following:

1. Addressing the extent to which taxpayer-financed research inures to the benefit of the private sector and how the State can benefit from maintaining patent rights;
2. Recommending favorable pricing policies for taxpayer-funded research;
3. Identifying differences between intellectual property policies between institutions conducting taxpayer-funded research and recommending a uniform policy to be adopted by this Legislature;
4. Assessing compliance with existing conflict-of-interest policies for the commercialization of intellectual property; and
5. Cataloging the State's intellectual property portfolio, specifically describing the relationship between the price of each taxpayer-funded invention, the public investment in the invention and the health and safety needs of the public.

The Maine Technology Institute Director is authorized to use any future bond proceeds to hire an expert in the field of intellectual property law and existing administrative funds to fulfill the requirements of the study. The director shall provide an interim report, with any necessary proposed legislation, to the Joint Standing Committee on Business, Research and Economic Development and the Joint Standing Committee on Education and Cultural Affairs on the progress of the study and any preliminary proposals for establishing reasonable pricing policies by November 1, 2007. The director shall submit a final report to the Joint Standing Committee on Business, Research and Economic Development and the Joint Standing Committee on Education and Cultural Affairs on the progress of the study and any preliminary proposals for establishing reasonable pricing policies by February 1, 2008.

SUMMARY

This bill establishes policies for the use of taxpayer-funded research in the private sector to maximize the return on investment for the public's benefit and to create a uniform policy for the transfer of taxpayer-funded research into the private sector. It also requires the Maine Technology Institute Director, in consultation with the Department of Economic and Community Development, Office of Innovation and an attorney with the University of Maine School of Law's intellectual property program and with participation from consumer advocacy groups, the University of Maine System and the business community, to perform a study to develop and gather information necessary to establish reasonable pricing policies for all taxpayer-funded research and make recommendations for changes in state laws and rules to ensure that commercialization and the development of intellectual property from taxpayer-funded research is widely available to the State and its citizens at a reasonable price.