

MAINE STATE LEGISLATURE

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L.D. 1914

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BUSINESS AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 712, L.D. 1914, Bill, "An Act to Make Minor Changes to the Maine Technology Institute's Statute and to Make Minor Changes to the Applied Technology Development Centers' Statute"

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

'An Act to Clarify the Application of the Freedom of Access Laws to Certain Proceedings and Records of the Maine Technology Institute'

Further amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 5 MRSA §15302-A is enacted to read:

§15302-A. Confidentiality; freedom of access

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

A. "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

B. "Grant" means any disbursement of funds through grants or other financial awards to private companies,

2 targeted technology incubators or nonprofit organizations,
3 pursuant to section 15303, as well as any investment of
4 funds, equity investment, securities, loan, contractual
5 arrangement or other evidence of indebtedness authorized by
6 section 15304.

7 C. "Trade secret" means a secret, commercially valuable
8 plan, formula, process or device that is used for the
9 making, preparing, compounding or processing of trade
10 commodities and that can be said to be the end product of
11 either innovation or substantial effort. There must be a
12 direct relationship between the trade secret and the
13 productive process.

14 **2. Proceedings; records; confidentiality.** The proceedings
15 of the board and the records of the institute are public for the
16 purposes of Title 1, chapter 13, except that the following
17 records are designated as confidential for purposes of Title 1,
18 section 402, subsection 3, paragraph A:

19 A. A record obtained or developed by the board prior to
20 receipt of a written application or proposal in a form
21 acceptable to the board for either financial assistance from
22 the board or in connection with a transfer of property to or
23 from the board. After receipt by the board of the
24 application or proposal, a record pertaining to the
25 application or proposal may not be considered confidential
26 unless it is confidential under another provision of this
27 subsection;

28 B. A peer review or analysis or other document related to
29 the evaluation of a grant application or proposal;

30 C. A record that the person, including the institute, to
31 whom the record belongs or pertains has requested be
32 designated confidential and that the institute has
33 determined contains proprietary information, trade secrets
34 or commercial or financial information, the release of which
35 could be competitively harmful to the submitter of the
36 information, could impair the institute's ability in the
37 future to obtain similar necessary information solely
38 through the voluntary provision of such information and
39 could affect other institute interests, such as program
40 effectiveness and compliance;

41 D. A financial statement, credit report or tax return of an
42 individual or other record obtained or developed by the
43 board, the disclosure of which would constitute an invasion
44 of personal privacy as determined by the board;

2 E. A record, including a financial statement or tax return
4 obtained or developed by the board in connection with
6 monitoring or servicing activity of the board, pertaining to
8 financial assistance provided or to be provided by or with
10 the assistance of the board;

12 F. A record obtained or developed by the board that contains
14 an assessment by a person who is not employed by the board
16 of the creditworthiness or financial condition of a person
18 or project;

20 G. A financial statement or business and marketing plan in
22 connection with a project receiving or to receive financial
24 assistance from the board, if the person to whom the
26 statement or plan belongs or pertains has requested that the
28 record be designated confidential; or

30 H. Those employee personnel records made confidential
32 pursuant to section 957, subsection 5 and section 17057;

34 **3. Wrongful disclosure prohibited.** A member, officer,
36 employee, agent, other representative of the board or other
38 person may not knowingly divulge or disclose records declared
40 confidential by this section, except that the board may, in its
42 discretion, make or authorize a disclosure of impersonal,
44 statistical or general information or may make or authorize
46 disclosure of information:

48 A. If necessary in connection with processing an
application for or obtaining or maintaining financial
assistance for a person or in connection with acquiring,
maintaining or disposing of property;

B. To a financing institution or credit reporting service;

C. If necessary to comply with any federal or state law or
rule or with an agreement pertaining to financial assistance;

D. If necessary to ensure collection of an obligation in
which the board has or may have an interest;

E. Obtained from records declared confidential by this
section for introduction for the record in litigation or a
proceeding in which the board has appeared; and

F. Pursuant to a subpoena, request for production of
documents, warrant or other order by competent authority, as
long as the order appears to have first been served on the
person to whom the confidential information sought pertains

or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

4. Public information. Notwithstanding subsection 2, the institute shall make available the following information upon request:

A. Names and addresses of recipients of or applicants for financial assistance, including principals where applicable;

B. Amounts, types and terms of financial assistance provided to recipients or requested by applicants, including, without limitation, repayment period, security and rights of the institute to receive royalties and other payments, if any;

C. General descriptions of projects and businesses benefiting or to benefit from financial assistance;

D. Names of transferors or transferees, including principals, of property to or from the institute, the general terms of transfer, the transfer instrument or agreement and the purposes for which the transferred property will be used;

E. Number of new jobs created, the number of patents and copyrightable works produced, information identifying the patents and registered copyrightable works produced, the amount of royalties or returns on equity investments received by the institute or the amount of repayments received by the institute in connection with institute grants, except for information that would place a recipient of or an applicant for financial assistance at a competitive disadvantage;

F. Policies concerning institute governance, operations or procedures for review or funding of applications; or

G. Any information pursuant to waiver considered satisfactory by the institute.

5. Construction. This section must be strictly construed to protect the confidentiality of all documents designated as confidential, the confidentiality of which is essential to the technology development purpose of the institute and to the confidence of the private sector in the institute and its mission.'

2 Further amend the bill in section 3 in paragraph D in the
2nd line (page 1, line 37 in L.D.) by striking out the
4 following: "and their tenants"

6 **SUMMARY**

8 This amendment changes the title of the bill. The amendment
also strikes and replaces section 2 of the bill. It declares
10 that the proceedings and records of the Maine Technology
Institute are subject to the freedom of access laws and specifies
12 which records and documents are exempt from the provisions of
Title 1, chapter 13 and are thus confidential. Generally, the
14 exemptions relate to documents that contain proprietary
information and trade secrets the disclosure of which could be
16 competitively harmful to a business that is an applicant for
financial support or a recipient of financial support from the
18 institute. The amendment also specifies which institute
information is available to the public on request. Finally, the
20 amendment strikes a reference to the tenants of the applied
technology development centers in section 3 of the bill.
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