

Northeast Ohio Correctional Center (NEOCC). This highly critical report followed numerous violent confrontations between guards and inmates, an escape by six inmates, and the killing of two other inmates. The Trustee's report strongly and unequivocally criticized virtually all aspects of the operations of NEOCC. The company that runs this facility, Corrections Corporation of America (CCA), is the most experienced in the country.

The industry is a new one with relatively few vendors. The NEOCC experience is fair warning of what could happen if BOP proceeds on the basis of an automatic mandate in spite of the evidence that has accumulated here and around the country. The mounting troubles have been so great that the BOP was forced to revise the original request for proposal (RFP). The new process employs two RFPs, thereby separating low security male inmates from minimum security males, females and young offenders. Furthermore, the RFP for low security inmates now requires the BOP to consider prior performance of the vendors before awarding the contract.

However, this action puts BOP behind schedule for privatization mandated by the Revitalization Act. The experience of the private sector argues for a much more careful approach than Congress was aware of at the time the 1997 Revitalization Act was passed. Whereas 50 percent of D.C. inmates are to be privatized in 5 years time, the 50 percent far exceeds any comparable number of inmates currently housed in any private facility.

My provision does not bar privatization, but it could bar further disasters that have surrounded such privatization contracts. BOP may still decide to house the same, or different number in private facilities. The only point in this provision is to keep the BOP from believing it must go over the side of a cliff even if there would be a more sensible path.

#### INTRODUCTION OF LEGISLATION

### HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 6, 1999

Mr. BROWN of California. Mr. Speaker, I am introducing a bill to repeal a legislative provision included in P.L. 105-277, the omnibus bill making appropriations for Fiscal Year 1999. This provision directs the Office of Management and Budget to amend section—36 of Circular A110 to require Federal agencies to ensure that all data produced under grants made to institutions of higher education, hospitals, and non-profit organizations will be made available to the public through procedures established under the Freedom of Information Act (FOIA).

This provision should be repealed on the basis of both the flawed process through which it was adopted and because of the damage it is likely to do to the publicly funded research structure which we have developed over the past 50 years. This scope of this provision has never been examined in public and has never been the subject of a hearing. And, if protests from the research community are correct, this provision poses a major threat to academic freedom in the United States.

On the process issue, it is ironic, that a provision which some have described as a sunshine provision was tucked into a 4,000-page bill in the dead of night. There were no bills introduced in the 106th Congress containing this provision. There were no hearings held to determine whether there was a problem with the current situation with regard to data availability in the scientific community. We do not know what the scope of any existing problem is, or whether using the Freedom of Information Act is the best way to address this alleged problem. No one in the university, hospital, or non-profit community was provided an opportunity to comment on this legislative provision or the need for it. To alter the rules that the scientific community has operated under for decades without providing them an opportunity to speak to the need for this change or to participate in developing it, is not only unwise, it is unfair.

I fully support the free and open exchange of information, as I believe all Members do. I doubt we could have made the progress we have in science without sharing of new knowledge. Scientists, both publicly and privately funded, routinely use a variety of mechanisms to share data and information with one another and with the public. The proliferation of scientific journals, increased scientific programming on television and radio, and routine science coverage by daily news journals are all evidence of this. However, I believe there are numerous reasons to question the wisdom of mandating the application of the Freedom of Information Act to data generated under this category of federal research funding as a mechanism for achieving the laudable goal of facilitating the dissemination of scientific information.

A number of my colleagues joined me in sending a letter to the Administration to express some specific concerns regarding the implementation of this policy change, and I am appending this letter at the end of these remarks. One area of concern pertains to research involving human subjects. Public health and bio-medical research requires the voluntary participation of human subjects. Volunteers currently make agreements with researchers and their institutions to divulge personal medical information on the condition that their information will remain strictly confidential. They do this with the understanding that they are making this agreement with the research institution and not with the federal government. Although FOIA provides protections for some types of information, the provisions may not be adequate to ensure confidentiality. Even if they were, I believe individuals will be reluctant to divulge sensitive personal information knowing that this information effectively becomes the property of the U.S. Government as an official government record. Significant loss of voluntary participation in public health and bio-medical research would be devastating.

I am also concerned that this provision could facilitate the theft of intellectual property. We have numerous statutes, such as the Bayh-Dole Act, which provide protections for the intellectual property of researchers receiving Federal awards. Mandating the accessibility of all data produced under a Federal award would undermine the protections for researchers' intellectual property rights guaran-

teed under copyright and other technology transfer laws. Although Circular A110 does not cover Federal awards to businesses and contractors, there are numerous instances of university-private sector partnerships in which private and federal dollars are intermingled within research projects. While privately-funded research will not be subject to FOIA, companies may be reluctant to continue some areas of joint research with federally-funded institutions who must comply with this mandate because of ambiguities created in the determination of which data would or would not be subject to FOIA.

I am also concerned about the potential for increases in administrative burdens and costs for granting agencies and for award recipients. Universities and other grant receiving institutions are likely to feel compelled to create formal, centralized procedures for responding to requests for data and for implementing the requirements of FOIA. While the language of the Omnibus Bill indicates that agencies could charge a user fee for obtaining data at the request of a private party, there appears to be no mechanism available to award recipients to offset the administrative costs of complying with the required change in policy. Increased administrative costs associated with grants come at the expense of research. Increased administrative costs are not, in themselves, a reason not to move forward with policies in the public interest. However, we should have taken the time to consider what the nature and level of the costs of compliance with this provision were likely to be.

Obviously, some groups feel that an information-sharing problem exists. They may now feel that their concerns have been addressed. However, documentation of this problem has been no more than anecdotal. What we do know is that our nation has derived immeasurable public and private benefits from government-sponsored research. We should not jeopardize this enterprise by taking a hasty, ill-considered approach to remedy an alleged problem. If this problem is serious enough to require legislative remedy, then it is certainly serious enough to receive reasoned consideration by Congress. I encourage my colleagues to join me in repealing this provision, and giving this issue the attention it deserves by proceeding through the normal process which gives all groups an opportunity to participate in the legislative process.

CONGRESS OF THE UNITED STATES,

HOUSE OF REPRESENTATIVES,

Washington, DC, December 7, 1998.

Hon. JACK LEW,

Director, Office of Management and Budget,  
Old Executive Office Building, Washington,  
DC.

DEAR MR. LEW: We are writing to you concerning the provision included in H.R. 4328, Making Omnibus Consolidated and Emergency Supplemental Appropriations for FY 1999, which requires OMB to amend Section -3.6 of Circular A110 to require Federal agencies to ensure that all data produced under grants made to institutions of higher education, hospitals, and non-profit organizations will be made available to the public through procedures established under the Freedom of Information Act (FOIA).

While we all support the free and open exchange of information, we have concerns

that there may be a number of negative, unintended consequences for the conduct of research under federal awards if this Circular is amended in haste and without sufficient input from federal grand-awarding agencies and grant recipients. An amendment of similar intent was offered and defeated in the House Appropriations Committee one year ago because of Members' concerns about negative impacts of making this policy change on federally-funded research. At that time, a number of agencies provided comments indicating numerous potential problems associated with making all data from federal awards subject to FOIA. We believe these concerns were and are still valid. We urge you to consider the agencies' concerns as you develop the required proposal.

One area of concern pertains to research involving human subjects. Public health and bio-medical research requires the voluntary participation of human subjects. Volunteers currently make agreements with researchers and their institutions to divulge personal medical information on the condition that their information will remain strictly confidential. They do this with the understanding that they are making this agreement with the research institution and not with the federal government. Although FOIA provides protections for some types of information, the provisions may not be adequate to ensure confidentiality. Even if they were, we believe individuals will be reluctant to divulge sensitive personal information knowing that this information effectively becomes the property of the U.S. Government as an official government record. Significant loss of voluntary participation in public health and bio-medical research would be devastating.

We are also concerned that this provision could facilitate the theft of intellectual property. We have numerous statutes, such as the Bayh-Dole Act, which provide protections for the intellectual property of researchers' receiving federal awards. Mandating the accessibility of all data produced under a federal award would undermine the protections for researchers intellectual property rights guaranteed under copyright and other technology transfer laws. Although Circular A110 does not cover federal awards to businesses and contractors, there are numerous instances of university-private sector partnerships in which private and federal dollars are intermingled within research projects. While privately-funded research will not be subject to FOIA, companies may be reluctant to continue some areas of joint research with federally-funded institutions who must comply with this mandate because of ambiguities created in the determination of which data would or would not be subject to FOIA.

We are also concerned about the potential for increases in administrative burdens and costs for granting agencies and for award recipients. Universities and other grant receiving institutions are likely to feel compelled to create formal, centralized procedures for responding to requests for data and for implementing the requirements of FOIA. While the language of the Omnibus Bill indicates that agencies could charge a user fee for obtaining data at the request of a private party, there appears to be no mechanism available to award recipients to offset the administrative costs of complying with the required change in policy. Increased administrative costs associated with grants come at the expense of research. Increased administrative costs are not, in themselves, a reason not to move forward with policies in the pub-

lic interest, but we would like to ensure that the benefits of making this change are commensurate with the costs. We encourage your office to explore this question and to work with agencies and award recipients to keep any required administrative costs to a minimum.

The above-mentioned concerns represent a few examples of the problems that we wish to see avoided in implementing this provision. Consequently, we urge you to solicit input from all federal grant-awarding agencies, and from the higher education, hospital, and non-profit grant recipient community before moving forward with this change.

Unfortunately, Congress did not hold hearings to examine whether the scope of potential problems with existing practices with regard to data sharing is sufficient to have warranted this type of change. Obviously, some groups feel that a problem exists; however, documentation of this problem has been no more than anecdotal. What we do know is that our nation has derived immeasurable public and private benefits from government-sponsored research. We do not wish to see this enterprise jeopardized by taking a hasty, ill-considered approach to remedy an alleged problem.

We encourage you to take every opportunity to explore methods of implementing this policy change in a way that serves the laudable goal of facilitating the dissemination of information without causing undue burdens or creating barriers to the continued pursuit of new knowledge through federally-funded research.

We also request that you contact Anthony McCann (Appropriations Committee; 225-3508) and Jean Fruci (Science Committee 225-6375) to schedule a meeting for interested Hill staff to brief us on your plans for implementing this provision. Thank you for your attention and consideration.

Sincerely,

John Edward Porter, James T. Walsh, Sherwood L. Boehlert, Constance A. Morella, Vernon J. Ehlers, George E. Brown, Jr., Nita M. Lowey, David E. Price, Howard L. Berman, Edolphus Towns, Bob Filner, Lynn C. Woolsey, Carolyn McCarthy, Maurice D. Hinchey, Major R. Owens, Henry A. Waxman, Albert R. Wynn, Lynn N. Rivers, Lois Capps, James A. Traficant, Jr., Louise M. Slaughter, Jose E. Serrano, Steven C. LaTourette.

---

#### INTRODUCTION OF LEGISLATION TO ELIMINATE THE WORKFORCE SHORTAGE IN THE HIGH TECH- NOLOGY SECTOR

**HON. JAMES P. MORAN**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, January 6, 1999*

Mr. MORAN of Virginia. Mr. Speaker, we have been privileged to live in a time of unparalleled economic growth. Much of this growth is directly attributable to the high technology sector.

The information technology sector contributes a larger share of our gross domestic product than almost any other industry. U.S. firms dominate the world market in both high tech products and high tech services. Over 3.3 million Americans are directly employed in high technology jobs.

The workforce shortage faced by the technology sector threatens both our world dominance in the technology sector and our continued economic prosperity.

Over the next ten years, the global economy is projected to grow at three times the rate of the U.S. economy. Basic high technology infrastructure needs, in just eight of the fastest growing countries, are expected to reach \$1.6 trillion. If the U.S. does not seize the opportunity to supply the goods and services to these emerging markets, others will.

But U.S. firms simply cannot compete if they do not have access to a highly trained workforce. There can be no doubt that our current workforce is failing to keep pace with the needs of industry. Some ten percent of high technology jobs are now vacant. U.S. firms who cannot find enough domestic workers are sending more and more contracts overseas. It is incumbent upon us to stop this trend.

The 105th Congress helped mitigate this problem by enacting legislation which would raise the annual limit on temporary immigrants who are skilled in jobs for which there are a shortage of American workers. However, we cannot reasonably expect to eliminate the workforce shortage without addressing the crux of the problem: our failure to adequately train and re-train American workers.

Existing government training programs have not sufficiently trained or placed workers in those sectors of our economy with the greatest need. To rectify this problem, I am introducing a legislative package to ensure that training programs provide the skills that American employers need by bolstering industry-driven training programs, creating incentives for successful placement, and providing for the special concerns that multi-state regions, such as the Washington Metropolitan Area, experience as they seek qualified workers.

The bills I have introduced today are:

H.R. , TO ESTABLISH FOR REGIONAL SKILLS TRAINING ALLIANCES

Modeled after the successful Manufacturing Extension Program, this bill recognizes that in rapidly expanding industry, employers are best positioned to identify the skills and knowledge needed for emerging jobs. It would provide matching funds to encourage companies to participate in consortia that would address their industry's specific skill needs. Every dollar in federal support will be matched by a dollar in state or local government support and a dollar in direct industry support.

H.R. , TO ESTABLISH REGIONAL PRIVATE INDUSTRY COUNCILS FOR LABOR MARKET AREAS THAT ARE LOCATED IN MORE THAN ONE STATE

This bill allows the Secretary of Labor to establish Regional Private Industry Councils (PICs). PICs play a constructive role in addressing the workforce needs within a state. These organizations, however, are state organizations and not formed to address problems that may cross state lines. To remedy that situation, this bill would allow the Secretary of Labor to certify, and fund, regional PICs that address regional problems. The new PICs would be funded directly by the Secretary of Labor to ensure that they do not take from existing state programs.