

115TH CONGRESS
1ST SESSION

S. 943

To direct the Secretary of the Interior to conduct an accurate comprehensive student count for the purposes of calculating formula allocations for programs under the Johnson-O'Malley Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2017

Ms. HEITKAMP (for herself, Mr. LANKFORD, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To direct the Secretary of the Interior to conduct an accurate comprehensive student count for the purposes of calculating formula allocations for programs under the Johnson-O'Malley Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Johnson-O'Malley Sup-
5 plemental Indian Education Program Modernization Act”.

1 **SEC. 2. INDIAN EDUCATION PROGRAM STUDENT COUNT**
 2 **UPDATE.**

3 The Act of April 16, 1934 (25 U.S.C. 5342 et seq.)
 4 (commonly referred to as the Johnson-O'Malley Act), is
 5 amended by adding at the end the following:

6 **“SEC. 7. COMPUTATION OF STUDENT COUNT.**

7 “(a) DEFINITIONS.—For the purposes of this Act,
 8 the following definitions apply:

9 “(1) CONTRACTING PARTY.—The term ‘con-
 10 tracting party’ means an entity that has a contract
 11 through a program authorized under this Act.

12 “(2) EXISTING CONTRACTING PARTY.—The
 13 term ‘existing contracting party’ means a con-
 14 tracting party that has a contract under this Act
 15 that is in effect on the date of enactment of the
 16 JOM Modernization Act.

17 “(3) JOM MODERNIZATION ACT.—The term
 18 ‘JOM Modernization Act’ means the Johnson-
 19 O'Malley Supplemental Indian Education Program
 20 Modernization Act.

21 “(4) NEW APPLICANT.—The term ‘new appli-
 22 cant’ means an entity that applies to participate in
 23 a contract under this Act after the date of enact-
 24 ment of the JOM Modernization Act but not later
 25 than 240 days after such date of enactment.

1 “(5) NEW CONTRACTING PARTY.—The term
 2 ‘new contracting party’ means an entity that enters
 3 into a contract under this Act after the date of en-
 4 actment of the JOM Modernization Act.

5 “(6) SECRETARY.—The term ‘Secretary’ means
 6 the Secretary of the Interior.

7 “(b) IN GENERAL.—Except as provided in subsection
 8 (f) and pursuant to subsection (g), the Secretary shall de-
 9 termine the amount that a contracting party receives
 10 under such contract for any fiscal year in accordance
 11 with—

12 “(1) the distribution formula described in sec-
 13 tion 273.31 of title 25, Code of Federal Regulations
 14 (as in effect on the day before the date of enactment
 15 of the JOM Modernization Act) and future itera-
 16 tions of the formula as determined by the Bureau of
 17 Indian Education in consultation with Indian tribes
 18 and contracting parties; and

19 “(2) the number of eligible Indian students
 20 served or potentially served by the contracting party,
 21 as determined by the Secretary in accordance with
 22 subsection (c).

23 “(c) DETERMINATION OF THE NUMBER OF ELIGIBLE
 24 INDIAN STUDENTS.—

1 “(1) INITIAL DETERMINATIONS FOR EXISTING
2 CONTRACTING PARTIES.—

3 “(A) IN GENERAL.—The Secretary shall
4 make an initial determination of the number of
5 eligible Indian students served by each existing
6 contracting party in accordance with subpara-
7 graph (B).

8 “(B) PROCESS FOR MAKING THE INITIAL
9 DETERMINATION.—

10 “(i) PRELIMINARY REPORT.—Not
11 later than 180 days after the date of en-
12 actment of the JOM Modernization Act,
13 the Secretary shall publish a preliminary
14 report describing the number of eligible In-
15 dian students served by each existing con-
16 tracting party, using the most applicable
17 and accurate data (as determined by the
18 Secretary in consultation with existing con-
19 tracting parties) from the fiscal year pre-
20 ceding the fiscal year for which the initial
21 determination is to be made from—

22 “(I) the Bureau of the Census;

23 “(II) the National Center for
24 Education Statistics; or

1 “(III) the Office of Indian Edu-
2 cation of the Department of Edu-
3 cation.

4 “(ii) DATA EVALUATION.—

5 “(I) IN GENERAL.—After pub-
6 lishing the preliminary report under
7 clause (i), the Secretary shall evaluate
8 the accuracy of the findings contained
9 in such report.

10 “(II) CONSULTATION.—To in-
11 form the evaluation described in sub-
12 clause (I), the Secretary shall estab-
13 lish a 60-day comment period to gain
14 feedback about the preliminary report
15 from existing contracting parties.

16 “(III) DATA RECONCILIATION.—
17 To evaluate the accuracy of the pre-
18 liminary report and through the con-
19 sultation process required under sub-
20 clause (II), the Secretary shall rec-
21 oncile the data described in the pre-
22 liminary report with—

23 “(aa) the existing con-
24 tracting party’s data regarding
25 the number of eligible Indian stu-

1 dents served by that existing con-
 2 tracting party for the fiscal year
 3 preceding the fiscal year for
 4 which the initial determination is
 5 made; and

6 “(bb) identifiable tribal en-
 7 rollment information.

8 “(iii) FINAL REPORT.—Not later than
 9 120 days after concluding the consultation
 10 described in clause (ii)(II), the Secretary
 11 shall publish a final report on the initial
 12 determination of the number of eligible In-
 13 dian students served by each existing con-
 14 tracting party.

15 “(C) TECHNICAL ASSISTANCE.—The Sec-
 16 retary, acting through the Director of the Bu-
 17 reau of Indian Education, shall provide existing
 18 contracting parties with technical assistance re-
 19 lating to the receipt and provision of informa-
 20 tion on the number of eligible Indian students
 21 served by the existing contracting party.

22 “(2) INITIAL DETERMINATIONS FOR NEW AP-
 23 PLICANTS.—

24 “(A) IN GENERAL.—For the purposes of
 25 making an initial determination of the number

of potentially eligible Indian students to be served by each new applicant, the Secretary shall publish a report in accordance with subparagraph (B).

“(B) PROCESS FOR MAKING THE INITIAL DETERMINATION.—To determine the number of potentially eligible Indian students to be served by new applicants, the Secretary shall—

“(i) include in the report the respective total eligible Indian student counts for each new applicant, as reported by the applicant during the application process, and other pertinent information, as determined by the Secretary; and

“(ii) publish the report described in clause (i) on the same date the final report described in paragraph (1)(B)(iii) is published.

“(3) SUBSEQUENT ACADEMIC YEARS.—For each academic year following the fiscal year for which an initial determination is made under paragraphs (1) and (2), the Secretary shall determine the number of eligible Indian students served by the contracting party based on the reported eligible In-

1 dian student count numbers identified through the
 2 reporting process described in subsection (d).

3 “(d) CONTRACTING PARTY STUDENT COUNT RE-
 4 PORTING COMPLIANCE.—

5 “(1) IN GENERAL.—For each academic year
 6 following the fiscal year for which an initial deter-
 7 mination is made under subsection (c), each con-
 8 tracting party shall submit to the Secretary a report
 9 describing the number of eligible Indian students
 10 who were served using amounts allocated to such
 11 party under this Act during the previous fiscal year.

12 “(2) FAILURE TO COMPLY.—A contracting
 13 party that fails to submit a report under paragraph
 14 (1) shall receive no amounts under this Act for the
 15 fiscal year following the academic year for which the
 16 report should have been submitted.

17 “(3) NOTICE.—The Secretary shall provide con-
 18 tracting parties with timely information relating
 19 to—

20 “(A) initial and final reporting deadlines;
 21 and

22 “(B) the consequences of failure to comply
 23 outlined in paragraph (2).

24 “(4) TECHNICAL ASSISTANCE.—The Secretary,
 25 acting through the Director of the Bureau of Indian

1 Education, shall provide technical assistance and
 2 training on compliance with the reporting require-
 3 ments of this subsection to contracting parties.

4 “(e) ANNUAL REPORT.—

5 “(1) IN GENERAL.—The Secretary shall pre-
 6 pare an annual report, including the most recent de-
 7 termination of the number of eligible Indian stu-
 8 dents served by each contracting party, and an as-
 9 sessment of the contracts under this Act that the
 10 Secretary—

11 “(A) may include in the budget request of
 12 the Department of the Interior for each fiscal
 13 year; and

14 “(B) shall submit to—

15 “(i) the Committee on Indian Affairs
 16 of the Senate;

17 “(ii) the Subcommittee on Interior,
 18 Environment, and Related Agencies of the
 19 Committee on Appropriations of the Sen-
 20 ate;

21 “(iii) the Committee on Natural Re-
 22 sources of the House of Representatives;
 23 and

24 “(iv) the Subcommittee on Interior,
 25 Environment, and Related Agencies of the

1 Committee on Appropriations of the House
2 of Representatives.

3 “(2) MANNER OF PREPARATION.—The Sec-
4 retary shall prepare the report under paragraph (1)
5 in a manner so as to prevent or minimize new ad-
6 ministrative burdens on contracting parties receiving
7 funds under this Act.

8 “(f) HOLD HARMLESS.—

9 “(1) IN GENERAL.—Except as provided under
10 paragraph (2) and subject to paragraph (3), for a
11 fiscal year, an existing contracting party shall not
12 receive an amount under this Act that is less than
13 the amount that such existing contracting party re-
14 ceived under this Act for the fiscal year preceding
15 the date of enactment of the JOM Modernization
16 Act.

17 “(2) EXCEPTIONS.—

18 “(A) IN GENERAL.—An existing con-
19 tracting party shall receive an amount under
20 this Act for a fiscal year that is less than the
21 amount that the existing contracting party re-
22 ceived under this Act for the fiscal year pre-
23 ceding the date of enactment of the JOM Mod-
24 ernization Act, if one or more of the following
25 conditions is met:

1 “(i) FAILURE TO REPORT.—The exist-
 2 ing contracting party failed to submit the
 3 report described in subsection (d) that was
 4 most recently due from the date of the de-
 5 termination.

6 “(ii) VIOLATIONS OF CONTRACT OR
 7 LAW.—The Secretary has found that the
 8 existing contracting party has violated the
 9 terms of a contract entered into under this
 10 Act or has otherwise violated Federal law.

11 “(iii) STUDENT COUNT DECREASE.—
 12 The number of eligible Indian students re-
 13 ported by such existing contracting party
 14 under subsection (d) has decreased below
 15 the number of eligible Indian students
 16 identified in the initial determination with
 17 respect to the existing contracting party
 18 under subsection (c)(1).

19 “(B) AMOUNT OF FUNDING REDUCTION
 20 FOR EXISTING CONTRACTING PARTIES REPORT-
 21 ING DECREASED STUDENT COUNTS.—A reduc-
 22 tion in an amount pursuant to subparagraph
 23 (A)(iii) shall not be done in such a manner that
 24 the existing contracting party receives an
 25 amount of funding per eligible Indian student

1 that is less than the amount of funding per eli-
2 gible Indian student such party received for the
3 fiscal year preceding the date of enactment of
4 the JOM Modernization Act.

5 “(3) SUNSET.—This subsection shall cease to
6 be effective at the beginning of the fiscal year after
7 the first fiscal year for which new contracting par-
8 ties receive an amount of funding per eligible Indian
9 student that is equal to or greater than the amount
10 of funding per eligible Indian student received by ex-
11 isting contracting parties for the fiscal year pre-
12 ceding the date of enactment of the JOM Mod-
13 ernization Act.

14 “(g) FUNDING ALLOCATION AND REFORM.—

15 “(1) PRESENT DAY PER STUDENT FUNDING AL-
16 LOCATION.—Not later than 60 days after an initial
17 determination is made under subsection (c), the Sec-
18 retary shall establish, in consultation with con-
19 tracting parties, a present day per student funding
20 allocation that shall serve as a funding baseline
21 under this Act.

22 “(2) FUNDING REFORM.—The Secretary may
23 make recommendations for legislation to increase the
24 amount of funds available per eligible Indian student
25 through contracts under this Act to equal to or

1 greater than the amount of funds that were available
 2 per eligible Indian student through contracts under
 3 this Act for fiscal year 1995, and attempt to identify
 4 additional sources of funding that do not reallocate
 5 existing funds otherwise utilized by Indian students
 6 served—

7 “(A) by the Bureau of Indian Education;

8 or

9 “(B) under title VI of the Elementary and
 10 Secondary Education Act of 1965 (20 U.S.C.
 11 7401 et seq.).

12 “(3) INCREASES IN PROGRAM FUNDING.—

13 “(A) IN GENERAL.—Subject to subsection
 14 (f) and subparagraphs (B) and (C), for any fis-
 15 cal year for which the amount appropriated to
 16 carry out this Act exceeds the amount appro-
 17 priated to carry out this Act for the preceding
 18 fiscal year, the excess amounts shall—

19 “(i) be allocated only to those con-
 20 tracting parties that have not received
 21 their full per student funding allocation as
 22 determined pursuant to paragraph (1); and

23 “(ii) be allocated first to new con-
 24 tracting parties that have not received

1 their full per student funding allocation as
 2 determined pursuant to paragraph (1).

3 “(B) PARITY IN FUNDING.—Subparagraph
 4 (A) shall have no effect after the first fiscal
 5 year for which each contracting party receives
 6 their full per student funding allocation as de-
 7 termined pursuant to paragraph (1).

8 “(C) FUTURE ALLOCATIONS.—Allocations
 9 of appropriations for fiscal years after the first
 10 fiscal year for which each contracting party re-
 11 ceives their full per student funding allocation
 12 as determined pursuant to paragraph (1) shall
 13 be made at the discretion of the Secretary, in
 14 consultation with Indian tribes and contracting
 15 parties.

16 “(h) INCREASED GEOGRAPHICAL AND TRIBAL PAR-
 17 TICIPATION IN THE JOHNSON-O’MALLEY SUPPLE-
 18 MENTARY EDUCATION PROGRAM.—To the maximum ex-
 19 tent practicable, the Secretary shall consult with Indian
 20 tribes and contact State educational agencies and local
 21 educational agencies that have not previously entered into
 22 a contract under this Act—

23 “(1) to determine the interest of the Indian
 24 tribes and State educational agencies and local edu-

1 cational agencies in entering into such contracts;
2 and

3 “(2) to share information relating to the proc-
4 ess for entering into a contract under this Act.

5 “(i) RULEMAKING.—Not later than one year after the
6 date of enactment of the JOM Modernization Act, the Sec-
7 retary, acting through the Director of the Bureau of In-
8 dian Education, shall undertake and complete a rule-
9 making process, following the provisions of subchapter II
10 of chapter 5 of title 5, United States Code, to—

11 “(1) determine how the regulatory definition of
12 ‘eligible Indian student’ may be revised to clarify eli-
13 gibility requirements for contracting parties under
14 this Act;

15 “(2) determine, as necessary, how the funding
16 formula described in section 273.31 of title 25, Code
17 of Federal Regulations (as in effect on the day be-
18 fore the date of enactment of the JOM Moderniza-
19 tion Act) may be clarified and revised to ensure full
20 participation of contracting parties and provide clar-
21 ity on the funding process under this Act; and

22 “(3) otherwise reconcile and modernize the
23 rules to comport with the activities of the con-
24 tracting parties under this Act as of the date of en-
25 actment of the JOM Modernization Act.

1 “(j) STUDENT PRIVACY.—The Secretary shall ensure
2 that data is collected and each report is prepared under
3 this section in a manner that protects the rights of eligible
4 Indian students in accordance with section 444 of the
5 General Education Provisions Act (commonly referred to
6 as the Family Educational Rights and Privacy Act of
7 1974) (20 U.S.C. 1232g).

8 “(k) GAO REPORT.—Not later than 2 years after the
9 date of enactment of the JOM Modernization Act, the
10 Comptroller General shall—

11 “(1) conduct a review of the implementation of
12 this section during the preceding two-year period, in-
13 cluding any factors impacting—

14 “(A) the accuracy of the determinations of
15 the number of eligible Indian students under
16 this section;

17 “(B) the communication between the Bu-
18 reau of Indian Education and contracting par-
19 ties; and

20 “(C) the efforts by the Bureau of Indian
21 Education to ensure accurate and sufficient dis-
22 tribution of funding for Indian students;

23 “(2) submit a report describing the results of
24 the review under paragraph (1) to—

1 “(A) the Committee on Indian Affairs of
2 the Senate;

3 “(B) the Subcommittee on Interior, Envi-
4 ronment, and Related Agencies of the Com-
5 mittee on Appropriations of the Senate;

6 “(C) the Subcommittee on Indian, Insular
7 and Alaska Native Affairs of the Committee on
8 Natural Resources of the House of Representa-
9 tives; and

10 “(D) the Subcommittee on Interior, Envi-
11 ronment, and Related Agencies of the Com-
12 mittee on Appropriations of the House of Rep-
13 resentatives; and

14 “(3) make such report publicly available.

15 “(1) EFFECT.—Nothing in this section—

16 “(1) creates a new program or duplicates pro-
17 gram activities under this Act; or

18 “(2) replaces or diminishes the effect of regula-
19 tions to carry out this Act existing on the day before
20 the date of enactment of the JOM Modernization
21 Act, unless expressly provided in this section.”.

○