

In the House of Representatives, U. S.,

December 11, 2018.

Resolved, That the bill from the Senate (S. 943) entitled “An Act 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.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Johnson-O’Malley Sup-*
3 *plemental Indian Education Program Modernization Act”.*

4 ***SEC. 2. INDIAN EDUCATION PROGRAM STUDENT COUNT UP-***
5 ***DATE.***

6 *The Act of April 16, 1934 (25 U.S.C. 5342 et seq.)*
7 *(commonly referred to as the Johnson-O’Malley Act) is*
8 *amended by adding at the end the following:*

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

10 *“(a) DEFINITIONS.—For the purposes of this Act, the*
11 *following definitions apply:*

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

1 “(2) *ELIGIBLE ENTITY.*—*The term ‘eligible enti-*
 2 *ty’ means an entity that is eligible to apply for a con-*
 3 *tract for a supplemental or operational support pro-*
 4 *gram under this Act, as outlined in section 1.*

5 “(3) *EXISTING CONTRACTING PARTY.*—*The term*
 6 *‘existing contracting party’ means a contracting*
 7 *party that has a contract under this Act that is in*
 8 *effect on the date of enactment of the JOM Moderniza-*
 9 *tion Act.*

10 “(4) *JOM MODERNIZATION ACT.*—*The term*
 11 *‘JOM Modernization Act’ means the Johnson-*
 12 *O’Malley Supplemental Indian Education Program*
 13 *Modernization Act.*

14 “(5) *NEW CONTRACTING PARTY.*—*The term ‘new*
 15 *contracting party’ means an entity that enters into a*
 16 *contract under this Act after the date of enactment of*
 17 *the JOM Modernization Act.*

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

20 “(b) *DETERMINATION OF THE NUMBER OF ELIGIBLE*
 21 *INDIAN STUDENTS.*—

22 “(1) *INITIAL DETERMINATIONS.*—

23 “(A) *IN GENERAL.*—*The Secretary shall*
 24 *make an initial determination of the number of*
 25 *eligible Indian students served or potentially*

served by each eligible entity in accordance with
subparagraph (B).

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

“(i) *PRELIMINARY REPORT.*—Not later
than 180 days after the date of enactment
of the *JOM Modernization Act*, the Sec-
retary shall publish a preliminary report
describing the number of eligible Indian
students served or potentially served by each
eligible entity, using the most applicable
and accurate data (as determined by the
Secretary in consultation with eligible enti-
ties) from the fiscal year preceding the fis-
cal year for which the initial determination
is to be made from—

“(I) the Bureau of the Census;

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

“(III) the Office of Indian Edu-
cation of the Department of Education.

“(ii) *DATA RECONCILIATION.*—To im-
prove the accuracy of the preliminary re-
port described in clause (i) prior to pub-
lishing, the Secretary shall reconcile the

1 *data described in the preliminary report*
2 *with—*

3 “(I) each existing contracting
4 party’s data regarding the number of
5 eligible Indian students served by the
6 existing contracting party for the fiscal
7 year preceding the fiscal year for
8 which the initial determination is
9 made; and

10 “(II) identifiable tribal enrollment
11 information.

12 “(iii) COMMENT PERIOD.—After pub-
13 lishing the preliminary report under clause
14 (i) in accordance with clause (ii), the Sec-
15 retary shall establish a 60-day comment pe-
16 riod to gain feedback about the preliminary
17 report from eligible entities, which the Sec-
18 retary shall take into consideration in pre-
19 paring the final report described in clause
20 (iv).

21 “(iv) FINAL REPORT.—Not later than
22 120 days after concluding the consultation
23 described in clause (iii), the Secretary shall
24 publish a final report on the initial deter-
25 mination of the number of eligible Indian

1 *students served or potentially served by each*
 2 *eligible entity, including justification for*
 3 *not including any feedback gained during*
 4 *such consultation, if applicable.*

5 “(2) *SUBSEQUENT ACADEMIC YEARS.*—*For each*
 6 *academic year following the fiscal year for which an*
 7 *initial determination is made under paragraph (1) to*
 8 *determine the number of eligible Indian students*
 9 *served or potentially served by a contracting party,*
 10 *the Secretary shall determine the number of eligible*
 11 *Indian students served by the contracting party based*
 12 *on the reported eligible Indian student count numbers*
 13 *identified through the reporting process described in*
 14 *subsection (c).*

15 “(c) *CONTRACTING PARTY STUDENT COUNT REPORT-*
 16 *ING COMPLIANCE.*—

17 “(1) *IN GENERAL.*—*For each academic year fol-*
 18 *lowing the fiscal year for which an initial determina-*
 19 *tion is made under subsection (b) to determine the*
 20 *number of eligible Indian students served or poten-*
 21 *tially served by a contracting party, the contracting*
 22 *party shall submit to the Secretary a report describ-*
 23 *ing the number of eligible Indian students who were*
 24 *served using amounts allocated to such party under*
 25 *this Act during the previous fiscal year. The report*

1 *shall also include an accounting of the amounts and*
 2 *purposes for which the contract funds were expended.*

3 “(2) *FAILURE TO COMPLY.*—*A contracting party*
 4 *that fails to submit a report under paragraph (1)*
 5 *shall receive no amounts under this Act for the fiscal*
 6 *year following the academic year for which the report*
 7 *should have been submitted.*

8 “(3) *NOTICE.*—*The Secretary shall provide con-*
 9 *tracting parties with timely information relating*
 10 *to—*

11 “(A) *initial and final reporting deadlines;*
 12 *and*

13 “(B) *the consequences of failure to comply*
 14 *outlined in paragraph (2).*

15 “(4) *TECHNICAL ASSISTANCE.*—*The Secretary,*
 16 *acting through the Director of the Bureau of Indian*
 17 *Education, shall provide technical assistance and*
 18 *training on compliance with the reporting require-*
 19 *ments of this subsection to contracting parties.*

20 “(d) *ANNUAL REPORT.*—

21 “(1) *IN GENERAL.*—*The Secretary shall prepare*
 22 *an annual report, including the most recent deter-*
 23 *mination of the number of eligible Indian students*
 24 *served by each contracting party, recommendations*
 25 *on appropriate funding levels for the program based*

1 *on such determination, and an assessment of the con-*
 2 *tracts under this Act that the Secretary—*

3 *“(A) may include in the budget request of*
 4 *the Department of the Interior for each fiscal*
 5 *year;*

6 *“(B) shall submit to—*

7 *“(i) the Committee on Indian Affairs*
 8 *of the Senate;*

9 *“(ii) the Subcommittee on Interior,*
 10 *Environment, and Related Agencies of the*
 11 *Committee on Appropriations of the Senate;*

12 *“(iii) the Committee on Education and*
 13 *the Workforce of the House of Representa-*
 14 *tives; and*

15 *“(iv) the Subcommittee on Interior,*
 16 *Environment, and Related Agencies of the*
 17 *Committee on Appropriations of the House*
 18 *of Representatives; and*

19 *“(C) shall make publicly available.*

20 *“(2) MANNER OF PREPARATION.—The Secretary*
 21 *shall prepare the report under paragraph (1) in a*
 22 *manner so as to prevent or minimize new adminis-*
 23 *trative burdens on contracting parties receiving funds*
 24 *under this Act.*

25 *“(e) HOLD HARMLESS.—*

1 “(1) *INITIAL HOLD HARMLESS.*—

2 “(A) *IN GENERAL.*—*Except as provided*
 3 *under subparagraph (B) and subject to subpara-*
 4 *graphs (C) and (D), for a fiscal year, an existing*
 5 *contracting party shall not receive an amount*
 6 *under this Act that is less than the amount that*
 7 *such existing contracting party received under*
 8 *this Act for the fiscal year preceding the date of*
 9 *enactment of the JOM Modernization Act.*

10 “(B) *EXCEPTIONS.*—

11 “(i) *IN GENERAL.*—*An existing con-*
 12 *tracting party shall receive an amount*
 13 *under this Act for a fiscal year that is less*
 14 *than the amount that the existing con-*
 15 *tracting party received under this Act for*
 16 *the fiscal year preceding the date of enact-*
 17 *ment of the JOM Modernization Act, if one*
 18 *or more of the following conditions is met:*

19 “(I) *FAILURE TO REPORT.*—*The*
 20 *existing contracting party failed to*
 21 *submit a complete report described in*
 22 *subsection (c) that was most recently*
 23 *due from the date of the determination.*

24 “(II) *VIOLATIONS OF CONTRACT*
 25 *OR LAW.*—*The Secretary has found*

1 *that the existing contracting party has*
 2 *violated the terms of a contract entered*
 3 *into under this Act or has otherwise*
 4 *violated Federal law.*

5 “(III) STUDENT COUNT DE-
 6 CREASE.—*The number of eligible In-*
 7 *dian students reported by such existing*
 8 *contracting party under subsection (c)*
 9 *has decreased below the number of eli-*
 10 *gible Indian students served by the ex-*
 11 *isting contracting party in the fiscal*
 12 *year preceding the date of enactment of*
 13 *the JOM Modernization Act.*

14 “(ii) AMOUNT OF FUNDING REDUCTION
 15 FOR EXISTING CONTRACTING PARTIES RE-
 16 PORTING DECREASED STUDENT COUNTS.—*A*
 17 *reduction in an amount pursuant to clause*
 18 *(i)(III) shall not be done in such a manner*
 19 *that the existing contracting party receives*
 20 *an amount of funding per eligible Indian*
 21 *student that is less than the amount of*
 22 *funding per eligible Indian student such*
 23 *party received for the fiscal year preceding*
 24 *the date of enactment of the JOM Mod-*
 25 *ernization Act.*

1 “(C) *RATABLE REDUCTIONS IN APPROPRIA-*
 2 *TIONS.—If the funds available under this Act for*
 3 *a fiscal year are insufficient to pay the full*
 4 *amounts that all existing contracting parties are*
 5 *eligible to receive under subparagraph (A) for the*
 6 *fiscal year, the Secretary shall ratably reduce*
 7 *those amounts for the fiscal year.*

8 “(D) *SUNSET.—This paragraph shall cease*
 9 *to be effective 4 years after the date of enactment*
 10 *of the JOM Modernization Act.*

11 “(2) *MAXIMUM DECREASE AFTER 4 YEARS.—Be-*
 12 *ginning 4 years after the date of enactment of the*
 13 *JOM Modernization Act, no contracting party shall*
 14 *receive for a fiscal year more than a 10 percent de-*
 15 *crease in funding per eligible Indian student from the*
 16 *previous fiscal year.*

17 “(f) *FUNDING ALLOCATION AND REFORM.—*

18 “(1) *FUNDING REFORM.—The Secretary may*
 19 *make recommendations for legislation to increase the*
 20 *amount of funds available per eligible Indian student*
 21 *through contracts under this Act to equal to or greater*
 22 *than the amount of funds that were available per eli-*
 23 *gible Indian student through contracts under this Act*
 24 *for fiscal year 1995, and attempt to identify addi-*
 25 *tional sources of funding that do not reallocate exist-*

1 *ing funds otherwise utilized by Indian students*
 2 *served—*

3 *“(A) by the Bureau of Indian Education; or*
 4 *“(B) under title VI of the Elementary and*
 5 *Secondary Education Act of 1965 (20 U.S.C.*
 6 *7401 et seq.).*

7 *“(2) INCREASES IN PROGRAM FUNDING.—*

8 *“(A) IN GENERAL.—Subject to subsection*
 9 *(e) and subparagraph (B), for any fiscal year for*
 10 *which the amount appropriated to carry out this*
 11 *Act exceeds the amount appropriated to carry*
 12 *out this Act for the preceding fiscal year, the ex-*
 13 *cess amounts shall—*

14 *“(i) be allocated only to those con-*
 15 *tracting parties that did not receive their*
 16 *full per student funding allocation for the*
 17 *previous fiscal year; and*

18 *“(ii) be allocated first to new con-*
 19 *tracting parties that did not receive their*
 20 *full per student funding allocation for the*
 21 *previous fiscal year.*

22 *“(B) PARITY IN FUNDING.—Subparagraph*
 23 *(A) shall have no effect after the first fiscal year*
 24 *for which each contracting party receives their*
 25 *full per student funding allocation.*

1 “(g) *INCREASED GEOGRAPHICAL AND TRIBAL PAR-*
 2 *TICIPATION IN THE JOHNSON-O’MALLEY SUPPLEMENTARY*
 3 *EDUCATION PROGRAM.*—*To the maximum extent prac-*
 4 *ticable, the Secretary shall consult with Indian tribes and*
 5 *contact State educational agencies, local educational agen-*
 6 *cies, and Alaska Native organizations that have not pre-*
 7 *viously entered into a contract under this Act—*

8 “(1) *to determine the interest of the Indian*
 9 *tribes, State educational agencies, local educational*
 10 *agencies, and Alaska Native organizations, in enter-*
 11 *ing into such contracts; and*

12 “(2) *to share information relating to the process*
 13 *for entering into a contract under this Act.*

14 “(h) *RULEMAKING.*—

15 “(1) *IN GENERAL.*—*Not later than 1 year after*
 16 *the date of enactment of the JOM Modernization Act,*
 17 *the Secretary, acting through the Director of the Bu-*
 18 *reau of Indian Education, shall undertake and com-*
 19 *plete a rulemaking process, following the provisions of*
 20 *subchapter II of chapter 5 of title 5, United States*
 21 *Code, to—*

22 “(A) *determine how the regulatory defini-*
 23 *tion of ‘eligible Indian student’ may be revised*
 24 *to clarify eligibility requirements for contracting*
 25 *parties under this Act;*

1 “(B) determine, as necessary, how the fund-
 2 ing formula described in section 273.31 of title
 3 25, Code of Federal Regulations (as in effect on
 4 the day before the date of enactment of the JOM
 5 Modernization Act) may be clarified and revised
 6 to ensure full participation of contracting par-
 7 ties and provide clarity on the funding process
 8 under this Act; and

9 “(C) otherwise reconcile and modernize the
 10 rules to comport with the activities of the con-
 11 tracting parties under this Act as of the date of
 12 enactment of the JOM Modernization Act.

13 “(2) REPORT.—Not later than 30 days after the
 14 date the rulemaking under paragraph (1) is complete,
 15 the Secretary shall submit a report to Congress de-
 16 scribing the results of such rulemaking and necessary
 17 recommendations to ensure the full implementation of
 18 such rulemaking.

19 “(i) STUDENT PRIVACY.—The Secretary shall ensure
 20 that data is collected and each report is prepared under
 21 this section in a manner that protects the rights of eligible
 22 Indian students in accordance with section 444 of the Gen-
 23 eral Education Provisions Act (commonly referred to as the
 24 Family Educational Rights and Privacy Act of 1974) (20
 25 U.S.C. 1232g).

1 “(j) *GAO REPORT*.—Not later than 18 months after
2 the final report described in subsection (b)(1)(B)(iv) is pub-
3 lished, the Comptroller General shall—

4 “(1) conduct a review of the implementation of
5 this section during the preceding 2-year period, in-
6 cluding any factors impacting—

7 “(A) the accuracy of the determinations of
8 the number of eligible Indian students under this
9 section;

10 “(B) the communication between the Bu-
11 reau of Indian Education and contracting par-
12 ties; and

13 “(C) the efforts by the Bureau of Indian
14 Education to ensure accurate and sufficient dis-
15 tribution of funding for Indian students;

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

18 “(A) the Committee on Indian Affairs of the
19 Senate;

20 “(B) the Subcommittee on Interior, Envi-
21 ronment, and Related Agencies of the Committee
22 on Appropriations of the Senate;

23 “(C) the Subcommittee on Indian, Insular
24 and Alaska Native Affairs of the Committee on

1 *Natural Resources of the House of Representa-*
2 *tives; and*

3 “(D) *the Subcommittee on Interior, Envi-*
4 *ronment, and Related Agencies of the Committee*
5 *on Appropriations of the House of Representa-*
6 *tives; and*

7 “(3) *make such report publicly available.*

8 “(k) *EFFECT.—Nothing in this section—*

9 “(1) *creates a new program or duplicates pro-*
10 *gram activities under this Act; or*

11 “(2) *replaces or diminishes the effect of regula-*
12 *tions to carry out this Act existing on the day before*
13 *the date of enactment of the JOM Modernization Act,*
14 *unless expressly provided in this section.”.*

Attest:

Clerk.

115TH CONGRESS
2^D SESSION

S. 943

AMENDMENT