

Calendar No. 295

115TH CONGRESS
2D SESSION

S. 943

[Report No. 115–201]

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

JANUARY 24, 2018

Reported by Mr. HOEVEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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,*

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**
5 **UPDATE.**

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,
11 the 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.

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

20 **“(3) JOM MODERNIZATION ACT.—**The term
21 ‘JOM Modernization Act’ means the Johnson-
22 O’Malley Supplemental Indian Education Program
23 Modernization Act.

24 **“(4) NEW APPLICANT.—**The term ‘new appli-
25 cant’ means an entity that applies to participate in
26 a contract under this Act after the date of enact-

1 ment of the JOM Modernization Act but not later
2 than 240 days after such date of enactment.

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

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

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

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

21 ~~“(2) the number of eligible Indian students~~
22 served or potentially served by the contracting party;
23 as determined by the Secretary in accordance with
24 subsection (c).

1 “(c) DETERMINATION OF THE NUMBER OF ELIGIBLE
2 INDIAN STUDENTS.—

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

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

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

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

24 “(I) the Bureau of the Census;

1 “(H) the National Center for
2 Education Statistics; or

3 “(III) the Office of Indian Edu-
4 cation of the Department of Edu-
5 cation.

6 “(ii) DATA EVALUATION.—

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

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

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

1 “(aa) the existing con-
 2 tracting party’s data regarding
 3 the number of eligible Indian stu-
 4 dents served by that existing con-
 5 tracting party for the fiscal year
 6 preceding the fiscal year for
 7 which the initial determination is
 8 made; and

9 “(bb) identifiable tribal en-
 10 rollment information.

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

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

1 ~~“(2) INITIAL DETERMINATIONS FOR NEW AP-~~
 2 ~~PLICANTS.—~~

3 ~~“(A) IN GENERAL.—~~For the purposes of
 4 making an initial determination of the number
 5 of potentially eligible Indian students to be
 6 served by each new applicant, the Secretary
 7 shall publish a report in accordance with sub-
 8 paragraph (B).

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

13 ~~“(i) include in the report the respec-~~
 14 ~~tive total eligible Indian student counts for~~
 15 ~~each new applicant, as reported by the ap-~~
 16 ~~plicant during the application process, and~~
 17 ~~other pertinent information, as determined~~
 18 ~~by the Secretary; and~~

19 ~~“(ii) publish the report described in~~
 20 ~~clause (i) on the same date the final report~~
 21 ~~described in paragraph (1)(B)(iii) is pub-~~
 22 ~~lished.~~

23 ~~“(3) SUBSEQUENT ACADEMIC YEARS.—~~For
 24 each academic year following the fiscal year for
 25 which an initial determination is made under para-

graphs (1) and (2), the Secretary shall determine the number of eligible Indian students served by the contracting party based on the reported eligible Indian student count numbers identified through the reporting process described in subsection (d).

~~“(d) CONTRACTING PARTY STUDENT COUNT REPORTING COMPLIANCE.—~~

~~“(1) IN GENERAL.—For each academic year following the fiscal year for which an initial determination is made under subsection (c), each contracting party shall submit to the Secretary a report describing the number of eligible Indian students who were served using amounts allocated to such party under this Act during the previous fiscal year.~~

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

~~“(3) NOTICE.—The Secretary shall provide contracting parties with timely information relating to—~~

~~“(A) initial and final reporting deadlines;~~

~~and~~

1 “(B) the consequences of failure to comply
2 outlined in paragraph (2).”

3 “(4) TECHNICAL ASSISTANCE.—The Secretary,
4 acting through the Director of the Bureau of Indian
5 Education, shall provide technical assistance and
6 training on compliance with the reporting require-
7 ments of this subsection to contracting parties.”

8 “(e) ANNUAL REPORT.—

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

15 “(A) may include in the budget request of
16 the Department of the Interior for each fiscal
17 year; and

18 “(B) shall submit to—

19 “(i) the Committee on Indian Affairs
20 of the Senate;

21 “(ii) the Subcommittee on Interior,
22 Environment, and Related Agencies of the
23 Committee on Appropriations of the Sen-
24 ate;

1 “(iii) the Committee on Natural Re-
 2 sources of the House of Representatives;
 3 and

4 “(iv) the Subcommittee on Interior,
 5 Environment, and Related Agencies of the
 6 Committee on Appropriations of the House
 7 of Representatives.

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

13 “(f) HOLD HARMLESS.—

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

22 “(2) EXCEPTIONS.—

23 “(A) IN GENERAL.—An existing con-
 24 tracting party shall receive an amount under
 25 this Act for a fiscal year that is less than the

1 amount that the existing contracting party re-
2 ceived under this Act for the fiscal year pre-
3 ceeding the date of enactment of the JOM Mod-
4 ernization Act, if one or more of the following
5 conditions is met:

6 “(i) FAILURE TO REPORT.—The exist-
7 ing contracting party failed to submit the
8 report described in subsection (d) that was
9 most recently due from the date of the de-
10 termination.

11 “(ii) VIOLATIONS OF CONTRACT OR
12 LAW.—The Secretary has found that the
13 existing contracting party has violated the
14 terms of a contract entered into under this
15 Act or has otherwise violated Federal law.

16 “(iii) STUDENT COUNT DECREASE.—
17 The number of eligible Indian students re-
18 ported by such existing contracting party
19 under subsection (d) has decreased below
20 the number of eligible Indian students
21 identified in the initial determination with
22 respect to the existing contracting party
23 under subsection (e)(1).

24 “(B) AMOUNT OF FUNDING REDUCTION
25 FOR EXISTING CONTRACTING PARTIES REPORT-

ING DECREASED STUDENT COUNTS.—A reduction in an amount pursuant to subparagraph (A)(iii) shall not be done in such a manner that the existing contracting party receives an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student such party received for the fiscal year preceding the date of enactment of the JOM Modernization Act.

“(3) SUNSET.—This subsection shall cease to be effective at the beginning of the fiscal year after the first fiscal year for which new contracting parties receive an amount of funding per eligible Indian student that is equal to or greater than the amount of funding per eligible Indian student received by existing contracting parties for the fiscal year preceding the date of enactment of the JOM Modernization Act.

“(g) FUNDING ALLOCATION AND REFORM.—

“(1) PRESENT DAY PER STUDENT FUNDING ALLOCATION.—Not later than 60 days after an initial determination is made under subsection (c), the Secretary shall establish, in consultation with contracting parties, a present day per student funding

1 allocation that shall serve as a funding baseline
2 under this Act.

3 ~~“(2) FUNDING REFORM.—~~The Secretary may
4 make recommendations for legislation to increase the
5 amount of funds available per eligible Indian student
6 through contracts under this Act to equal to or
7 greater than the amount of funds that were available
8 per eligible Indian student through contracts under
9 this Act for fiscal year 1995, and attempt to identify
10 additional sources of funding that do not reallocate
11 existing funds otherwise utilized by Indian students
12 served—

13 ~~“(A) by the Bureau of Indian Education;~~

14 or

15 ~~“(B) under title VI of the Elementary and~~
16 ~~Secondary Education Act of 1965 (20 U.S.C.~~
17 ~~7401 et seq.).~~

18 ~~“(3) INCREASES IN PROGRAM FUNDING.—~~

19 ~~“(A) IN GENERAL.—~~Subject to subsection
20 (f) and subparagraphs (B) and (C), for any fis-
21 cal year for which the amount appropriated to
22 carry out this Act exceeds the amount appro-
23 priated to carry out this Act for the preceding
24 fiscal year, the excess amounts shall—

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

5 “(ii) be allocated first to new con-
 6 tracting parties that have not received
 7 their full per student funding allocation as
 8 determined pursuant to paragraph (1).

9 “(B) ~~PARITY IN FUNDING.~~—Subparagraph
 10 (A) shall have no effect after the first fiscal
 11 year for which each contracting party receives
 12 their full per student funding allocation as de-
 13 termined pursuant to paragraph (1).

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

22 “(h) ~~INCREASED GEOGRAPHICAL AND TRIBAL PAR-~~
 23 ~~TICIPATION IN THE JOHNSON-O'MALLEY SUPPLE-~~
 24 ~~MENTARY EDUCATION PROGRAM.~~—To the maximum ex-
 25 tent practicable, the Secretary shall consult with Indian

1 tribes and contact State educational agencies and local
 2 educational agencies that have not previously entered into
 3 a contract under this Act—

4 “(1) to determine the interest of the Indian
 5 tribes and State educational agencies and local edu-
 6 cational agencies in entering into such contracts;
 7 and

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

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

16 “(1) determine how the regulatory definition of
 17 ‘eligible Indian student’ may be revised to clarify eli-
 18 gibility requirements for contracting parties under
 19 this Act;

20 “(2) determine, as necessary, how the funding
 21 formula described in section 273.31 of title 25, Code
 22 of Federal Regulations (as in effect on the day be-
 23 fore the date of enactment of the JOM Moderniza-
 24 tion Act) may be clarified and revised to ensure full

1 participation of contracting parties and provide clar-
 2 ity on the funding process under this Act; and

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

7 “(j) STUDENT PRIVACY.—The Secretary shall ensure
 8 that data is collected and each report is prepared under
 9 this section in a manner that protects the rights of eligible
 10 Indian students in accordance with section 444 of the
 11 General Education Provisions Act (commonly referred to
 12 as the Family Educational Rights and Privacy Act of
 13 1974) (20 U.S.C. 1232g).

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

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

20 “(A) the accuracy of the determinations of
 21 the number of eligible Indian students under
 22 this section;

23 “(B) the communication between the Bu-
 24 reau of Indian Education and contracting par-
 25 ties; and

1 “(C) the efforts by the Bureau of Indian
2 Education to ensure accurate and sufficient dis-
3 tribution of funding for Indian students;

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

6 “(A) the Committee on Indian Affairs of
7 the Senate;

8 “(B) the Subcommittee on Interior, Envi-
9 ronment, and Related Agencies of the Com-
10 mittee on Appropriations of the Senate;

11 “(C) the Subcommittee on Indian, Insular
12 and Alaska Native Affairs of the Committee on
13 Natural Resources of the House of Representa-
14 tives; and

15 “(D) the Subcommittee on Interior, Envi-
16 ronment, and Related Agencies of the Com-
17 mittee on Appropriations of the House of Rep-
18 resentatives; and

19 “(3) make such report publicly available.

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

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

23 “(2) replaces or diminishes the effect of regula-
24 tions to carry out this Act existing on the day before

1 the date of enactment of the JOM Modernization
 2 Act, unless expressly provided in this section.”.

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. INDIAN EDUCATION PROGRAM STUDENT COUNT UP-**
 7 **DATE.**

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

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

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

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

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

21 *“(3) EXISTING CONTRACTING PARTY.—The term*
 22 *‘existing contracting party’ means a contracting*
 23 *party that has a contract under this Act that is in*
 24 *effect on the date of enactment of the JOM Moderniza-*
 25 *tion Act.*

1 “(4) *JOM MODERNIZATION ACT.*—*The term*
 2 *‘JOM Modernization Act’ means the Johnson-*
 3 *O’Malley Supplemental Indian Education Program*
 4 *Modernization Act.*

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

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

11 “(b) *DETERMINATION OF THE NUMBER OF ELIGIBLE*
 12 *INDIAN STUDENTS.*—

13 “(1) *INITIAL DETERMINATIONS.*—

14 “(A) *IN GENERAL.*—*The Secretary shall*
 15 *make an initial determination of the number of*
 16 *eligible Indian students served or potentially*
 17 *served by each eligible entity in accordance with*
 18 *subparagraph (B).*

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

21 “(i) *PRELIMINARY REPORT.*—*Not later*
 22 *than 180 days after the date of enactment*
 23 *of the JOM Modernization Act, the Sec-*
 24 *retary shall publish a preliminary report*
 25 *describing the number of eligible Indian*

1 *students served or potentially served by each*
 2 *eligible entity, using the most applicable*
 3 *and accurate data (as determined by the*
 4 *Secretary in consultation with eligible enti-*
 5 *ties) from the fiscal year preceding the fis-*
 6 *cal year for which the initial determination*
 7 *is to be made from—*

8 *“(I) the Bureau of the Census;*

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

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

13 *“(ii) DATA RECONCILIATION.—To im-*
 14 *prove the accuracy of the preliminary re-*
 15 *port described in clause (i) prior to pub-*
 16 *lishing, the Secretary shall reconcile the*
 17 *data described in the preliminary report*
 18 *with—*

19 *“(I) each existing contracting*
 20 *party’s data regarding the number of*
 21 *eligible Indian students served by the*
 22 *existing contracting party for the fiscal*
 23 *year preceding the fiscal year for*
 24 *which the initial determination is*
 25 *made; and*

1 “(II) *identifiable tribal enrollment*
2 *information.*

3 “(iii) *COMMENT PERIOD.—After pub-*
4 *lishing the preliminary report under clause*
5 *(i) in accordance with clause (ii), the Sec-*
6 *retary shall establish a 60-day comment pe-*
7 *riod to gain feedback about the preliminary*
8 *report from eligible entities, which the Sec-*
9 *retary shall take into consideration in pre-*
10 *paring the final report described in clause*
11 *(iv).*

12 “(iv) *FINAL REPORT.—Not later than*
13 *120 days after concluding the consultation*
14 *described in clause (iii), the Secretary shall*
15 *publish a final report on the initial deter-*
16 *mination of the number of eligible Indian*
17 *students served or potentially served by each*
18 *eligible entity, including justification for*
19 *not including any feedback gained during*
20 *such consultation, if applicable.*

21 “(2) *SUBSEQUENT ACADEMIC YEARS.—For each*
22 *academic year following the fiscal year for which an*
23 *initial determination is made under paragraph (1) to*
24 *determine the number of eligible Indian students*
25 *served or potentially served by a contracting party,*

1 *the Secretary shall determine the number of eligible*
 2 *Indian students served by the contracting party based*
 3 *on the reported eligible Indian student count numbers*
 4 *identified through the reporting process described in*
 5 *subsection (c).*

6 “(c) *CONTRACTING PARTY STUDENT COUNT REPORT-*
 7 *ING COMPLIANCE.*—

8 “(1) *IN GENERAL.*—*For each academic year fol-*
 9 *lowing the fiscal year for which an initial determina-*
 10 *tion is made under subsection (b) to determine the*
 11 *number of eligible Indian students served or poten-*
 12 *tially served by a contracting party, the contracting*
 13 *party shall submit to the Secretary a report describ-*
 14 *ing the number of eligible Indian students who were*
 15 *served using amounts allocated to such party under*
 16 *this Act during the previous fiscal year.*

17 “(2) *FAILURE TO COMPLY.*—*A contracting party*
 18 *that fails to submit a report under paragraph (1)*
 19 *shall receive no amounts under this Act for the fiscal*
 20 *year following the academic year for which the report*
 21 *should have been submitted.*

22 “(3) *NOTICE.*—*The Secretary shall provide con-*
 23 *tracting parties with timely information relating*
 24 *to—*

1 “(A) *initial and final reporting deadlines;*
2 *and*

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

5 “(4) *TECHNICAL ASSISTANCE.—The Secretary,*
6 *acting through the Director of the Bureau of Indian*
7 *Education, shall provide technical assistance and*
8 *training on compliance with the reporting require-*
9 *ments of this subsection to contracting parties.*

10 “(d) *ANNUAL REPORT.—*

11 “(1) *IN GENERAL.—The Secretary shall prepare*
12 *an annual report, including the most recent deter-*
13 *mination of the number of eligible Indian students*
14 *served by each contracting party, recommendations*
15 *on appropriate funding levels for the program based*
16 *on such determination, and an assessment of the con-*
17 *tracts under this Act that the Secretary—*

18 “(A) *may include in the budget request of*
19 *the Department of the Interior for each fiscal*
20 *year; and*

21 “(B) *shall submit to—*

22 “(i) *the Committee on Indian Affairs*
23 *of the Senate;*

1 “(ii) the Subcommittee on Interior,
2 *Environment, and Related Agencies of the*
3 *Committee on Appropriations of the Senate;*

4 “(iii) the Committee on Education and
5 *the Workforce of the House of Representa-*
6 *tives; and*

7 “(iv) the Subcommittee on Interior,
8 *Environment, and Related Agencies of the*
9 *Committee on Appropriations of the House*
10 *of Representatives.*

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

16 “(e) *HOLD HARMLESS.—*

17 “(1) *INITIAL HOLD HARMLESS.—*

18 “(A) *IN GENERAL.—Except as provided*
19 *under subparagraph (B) and subject to subpara-*
20 *graphs (C) and (D), for a fiscal year, an existing*
21 *contracting party shall not receive an amount*
22 *under this Act that is less than the amount that*
23 *such existing contracting party received under*
24 *this Act for the fiscal year preceding the date of*
25 *enactment of the JOM Modernization Act.*

1 “(B) *EXCEPTIONS.*—

2 “(i) *IN GENERAL.*—*An existing con-*
 3 *tracting party shall receive an amount*
 4 *under this Act for a fiscal year that is less*
 5 *than the amount that the existing con-*
 6 *tracting party received under this Act for*
 7 *the fiscal year preceding the date of enact-*
 8 *ment of the JOM Modernization Act, if 1 or*
 9 *more of the following conditions is met:*

10 “(I) *FAILURE TO REPORT.*—*The*
 11 *existing contracting party failed to*
 12 *submit the report described in sub-*
 13 *section (c) that was most recently due*
 14 *from the date of the determination.*

15 “(II) *VIOLATIONS OF CONTRACT*
 16 *OR LAW.*—*The Secretary has found*
 17 *that the existing contracting party has*
 18 *violated the terms of a contract entered*
 19 *into under this Act or has otherwise*
 20 *violated Federal law.*

21 “(III) *STUDENT COUNT DE-*
 22 *CREASE.*—*The number of eligible In-*
 23 *dian students reported by such existing*
 24 *contracting party under subsection (c)*
 25 *has decreased below the number of eli-*

1 *gible Indian students served by the ex-*
 2 *isting contracting party in the fiscal*
 3 *year preceding the date of enactment of*
 4 *the JOM Modernization Act.*

5 “(ii) *AMOUNT OF FUNDING REDUCTION*
 6 *FOR EXISTING CONTRACTING PARTIES RE-*
 7 *PORTING DECREASED STUDENT COUNTS.—A*
 8 *reduction in an amount pursuant to clause*
 9 *(i)(III) shall not be done in such a manner*
 10 *that the existing contracting party receives*
 11 *an amount of funding per eligible Indian*
 12 *student that is less than the amount of*
 13 *funding per eligible Indian student such*
 14 *party received for the fiscal year preceding*
 15 *the date of enactment of the JOM Mod-*
 16 *ernization Act.*

17 “(C) *RATABLE REDUCTIONS IN APPROPRIA-*
 18 *TIONS.—If the funds available under this Act for*
 19 *a fiscal year are insufficient to pay the full*
 20 *amounts that all existing contracting parties are*
 21 *eligible to receive under subparagraph (A) for the*
 22 *fiscal year, the Secretary shall ratably reduce*
 23 *those amounts for the fiscal year.*

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

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

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

11 “(1) *PRESENT DAY PER STUDENT FUNDING AL-*
 12 *LOCATION.*—*Not later than 60 days after an initial*
 13 *determination is made under subsection (b), the Sec-*
 14 *retary shall propose, in consultation with Indian*
 15 *tribes and contracting parties, a present day per stu-*
 16 *dent funding allocation that shall serve as a funding*
 17 *baseline under this Act.*

18 “(2) *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 *“(3) 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 and local educational*
 6 *agencies that have not previously entered into a contract*
 7 *under this Act—*

8 “(1) *to determine the interest of the Indian tribes*
 9 *and State educational agencies and local educational*
 10 *agencies in entering into such contracts; and*

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

13 “(h) *RULEMAKING.—*

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

21 “(A) *determine how the regulatory defini-*
 22 *tion of ‘eligible Indian student’ may be revised*
 23 *to clarify eligibility requirements for contracting*
 24 *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 two-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.”.*

Calendar No. 295

115TH CONGRESS
2D Session

S. 943

[Report No. 115-201]

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.

JANUARY 24, 2018

Reported with an amendment