

115TH CONGRESS  
2D SESSION

# S. 943

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## 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.

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) **ELIGIBLE ENTITY.**—The term ‘eligible en-  
16 tity’ means an entity that is eligible to apply for a  
17 contract for a supplemental or operational support  
18 program under this Act, as outlined in section 1.

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

24 “(4) **JOM MODERNIZATION ACT.**—The term  
25 ‘JOM Modernization Act’ means the Johnson-

1 O'Malley Supplemental Indian Education Program  
2 Modernization Act.

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) DETERMINATION OF THE NUMBER OF ELIGI-  
10 BLE INDIAN STUDENTS.—

11 “(1) INITIAL DETERMINATIONS.—

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

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

19 “(i) PRELIMINARY REPORT.—Not  
20 later than 180 days after the date of en-  
21 actment of the JOM Modernization Act,  
22 the Secretary shall publish a preliminary  
23 report describing the number of eligible In-  
24 dian students served or potentially served  
25 by each eligible entity, using the most ap-

1           pllicable and accurate data (as determined  
2           by the Secretary in consultation with eligi-  
3           ble entities) from the fiscal year preceding  
4           the fiscal year for which the initial deter-  
5           mination is to be made from—

6                           “(I) the Bureau of the Census;

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

9                           “(III) the Office of Indian Edu-  
10          cation of the Department of Edu-  
11          cation.

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

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

1                   “(II) identifiable tribal enroll-  
2                   ment 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  
7                   period to gain feedback about the prelimi-  
8                   nary report from eligible entities, which the  
9                   Secretary shall take into consideration in  
10                  preparing the final report described in  
11                  clause (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  
18                  each eligible entity, including justification  
19                  for not including any feedback gained dur-  
20                  ing such consultation, if applicable.

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

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

6       “(c) CONTRACTING PARTY STUDENT COUNT RE-  
7       PORTING COMPLIANCE.—

8               “(1) IN GENERAL.—For each academic year  
9       following the fiscal year for which an initial deter-  
10      mination is made under subsection (b) to determine  
11      the number of eligible Indian students served or po-  
12      tentially served by a contracting party, the con-  
13      tracting party shall submit to the Secretary a report  
14      describing the number of eligible Indian students  
15      who were served using amounts allocated to such  
16      party under this Act during the previous fiscal year.

17              “(2) FAILURE TO COMPLY.—A contracting  
18      party that fails to submit a report under paragraph  
19      (1) shall receive no amounts under this Act for the  
20      fiscal year following the academic year for which the  
21      report 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 pre-  
12           pare an annual report, including the most recent de-  
13           termination of the number of eligible Indian stu-  
14           dents served by each contracting party, rec-  
15           ommendations on appropriate funding levels for the  
16           program based on such determination, and an as-  
17           sessment of the contracts under this Act that the  
18           Secretary—

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

22           “(B) shall submit to—

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

1           “(ii) the Subcommittee on Interior,  
2           Environment, and Related Agencies of the  
3           Committee on Appropriations of the Sen-  
4           ate;

5           “(iii) the Committee on Education  
6           and the Workforce of the House of Rep-  
7           resentatives; and

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

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

17          “(e) HOLD HARMLESS.—

18                 “(1) INITIAL HOLD HARMLESS.—

19                         “(A) IN GENERAL.—Except as provided  
20                         under subparagraph (B) and subject to sub-  
21                         paragraphs (C) and (D), for a fiscal year, an  
22                         existing contracting party shall not receive an  
23                         amount under this Act that is less than the  
24                         amount that such existing contracting party re-  
25                         ceived under this Act for the fiscal year pre-

1 ceding the date of enactment of the JOM Mod-  
2 ernization Act.

3 “(B) EXCEPTIONS.—

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

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

17 “(II) VIOLATIONS OF CONTRACT  
18 OR LAW.—The Secretary has found  
19 that the existing contracting party has  
20 violated the terms of a contract en-  
21 tered into under this Act or has other-  
22 wise violated Federal law.

23 “(III) STUDENT COUNT DE-  
24 CREASE.—The number of eligible In-  
25 dian students reported by such exist-

1           ing contracting party under sub-  
2           section (c) has decreased below the  
3           number of eligible Indian students  
4           served by the existing contracting  
5           party in the fiscal year preceding the  
6           date of enactment of the JOM Mod-  
7           ernization Act.

8           “(ii) AMOUNT OF FUNDING REDUC-  
9           TION FOR EXISTING CONTRACTING PAR-  
10          TIES REPORTING DECREASED STUDENT  
11          COUNTS.—A reduction in an amount pur-  
12          suant to clause (i)(III) shall not be done in  
13          such a manner that the existing con-  
14          tracting party receives an amount of fund-  
15          ing per eligible Indian student that is less  
16          than the amount of funding per eligible In-  
17          dian student such party received for the  
18          fiscal year preceding the date of enactment  
19          of the JOM Modernization Act.

20          “(C) RATABLE REDUCTIONS IN APPRO-  
21          PRIATIONS.—If the funds available under this  
22          Act for a fiscal year are insufficient to pay the  
23          full amounts that all existing contracting par-  
24          ties are eligible to receive under subparagraph

1 (A) for the fiscal year, the Secretary shall rat-  
2 ably reduce those amounts for the fiscal year.

3 “(D) SUNSET.—This paragraph shall cease  
4 to be effective 4 years after the date of enact-  
5 ment of the JOM Modernization Act.

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

12 “(f) FUNDING ALLOCATION AND REFORM.—

13 “(1) FUNDING REFORM.—The Secretary may  
14 make recommendations for legislation to increase the  
15 amount of funds available per eligible Indian student  
16 through contracts under this Act to equal to or  
17 greater than the amount of funds that were available  
18 per eligible Indian student through contracts under  
19 this Act for fiscal year 1995, and attempt to identify  
20 additional sources of funding that do not reallocate  
21 existing funds otherwise utilized by Indian students  
22 served—

23 “(A) by the Bureau of Indian Education;  
24 or

1           “(B) under title VI of the Elementary and  
2           Secondary Education Act of 1965 (20 U.S.C.  
3           7401 et seq.).

4           “(2) INCREASES IN PROGRAM FUNDING.—

5           “(A) IN GENERAL.—Subject to subsection  
6           (e) and subparagraph (B), for any fiscal year  
7           for which the amount appropriated to carry out  
8           this Act exceeds the amount appropriated to  
9           carry out this Act for the preceding fiscal year,  
10          the excess amounts shall—

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

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

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

23           “(g) INCREASED GEOGRAPHICAL AND TRIBAL PAR-  
24           TICIPATION IN THE JOHNSON-O’MALLEY SUPPLE-  
25           MENTARY EDUCATION PROGRAM.—To the maximum ex-

1 tent practicable, the Secretary shall consult with Indian  
 2 tribes and contact State educational agencies, local edu-  
 3 cational agencies, and Alaska Native organizations that  
 4 have not previously entered into a contract under this  
 5 Act—

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

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

12 “(h) RULEMAKING.—

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

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

24 “(B) determine, as necessary, how the  
 25 funding formula described in section 273.31 of

1 title 25, Code of Federal Regulations (as in ef-  
2 fect on the day before the date of enactment of  
3 the JOM Modernization Act) may be clarified  
4 and revised to ensure full participation of con-  
5 tracting parties and provide clarity on the fund-  
6 ing process under this Act; and

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

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

17 “(i) STUDENT PRIVACY.—The Secretary shall ensure  
18 that data is collected and each report is prepared under  
19 this section in a manner that protects the rights of eligible  
20 Indian students in accordance with section 444 of the  
21 General Education Provisions Act (commonly referred to  
22 as the Family Educational Rights and Privacy Act of  
23 1974) (20 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  
3 published, 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  
9 this 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  
17 the review under paragraph (1) to—

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

20 “(B) the Subcommittee on Interior, Envi-  
21 ronment, and Related Agencies of the Com-  
22 mittee 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 Com-  
5 mittee on Appropriations of the House of Rep-  
6 resentatives; 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  
14 Act, unless expressly provided in this section.”.

Passed the Senate March 22, 2018.

Attest:

*Secretary.*



115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 943**

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**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.