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### AMENDING THE NATIVE AMERICAN PROGRAMS ACT OF 1974 TO PROVIDE FLEXIBILITY AND REAUTHORIZATION TO ENSURE THE SURVIVAL AND CONTINUING VITALITY OF NATIVE AMERICAN LANGUAGES

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MARCH 25, 2019.—Ordered to be printed

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Mr. HOEVEN, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 256]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 256)<sup>1</sup> to amend the Native American Programs Act of 1974 to provide flexibility and reauthorization to ensure the survival and continuing vitality of Native American languages, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 256 is to provide additional flexibility for and reauthorization of the *Native American Languages Act of 1992*<sup>1</sup> and the *Esther Martinez Native Languages Preservation Act of 2006*,<sup>2</sup> two grant programs administered by the Administration for Native Americans (ANA) in the U.S. Department of Health and Human Services (HHS).

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<sup>1</sup>Native American Languages Act of 1992, Pub. L. No. 102-524, 25 U.S.C. §§ 2991b-3-2992d (1992).

<sup>2</sup>Esther Martinez Native Languages Preservation Act, Pub. L. No. 109-394, 42 U.S.C. §§ 2991b-3-2992d (2006).

## BACKGROUND AND HISTORY

*History of key federal laws supporting Native American languages*

In 1990, Congress passed the *Native American Languages Act* (NALA). This law recognizes the unique status of Native American cultures and languages. According to the law, it is federal policy to “preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages.”<sup>3</sup> Further, NALA declares federal support for “the use of Native American languages as a medium of instruction.”<sup>4</sup> Congress recognized a number of reasons for encouraging instruction in Native languages, including language survival, community pride, improved educational opportunity, and increased student achievement.

Two years later, Congress passed the *Native American Languages Act of 1992*. Building on the policies set forth in the original law, it directed the Secretary of Health and Human Services, acting through the ANA, to award grants to eligible tribal governments and Native American organizations to assist Native communities in assuring the survival and continuing vitality of their languages. Congress authorized use of these grants for developing community language programs, training language program personnel (e.g., teachers, interpreters, broadcasters, and translators), producing teaching materials, compiling oral language recordings, and purchasing language revitalization related equipment.

The *Esther Martinez Native American Languages Preservation Act* (NALPA), which further amended the NALA, was signed into law in December, 2006. Named after Ms. Esther Martinez, a Tewa teacher and storyteller, the NALPA bolsters federal support for Native language education by creating and funding the following programs:

- Native American language nests are educational programs that provide instruction and childcare to at least 10 children under the age of 7 and offer Native language classes to parents. Such programs use Native American language as the primary language of instruction.
- Native language survival schools are similar to language nests but have broader objectives. Located in regions with high numbers of Native Americans, these schools provide a minimum of 500 hours of instruction in at least one Native American language to at least 15 students. These schools aim to achieve student fluency in a Native American language alongside proficiency in mathematics, science, and language arts. Moreover, survival schools provide for teacher training and develop instructional courses and materials to advance Native American language learning and teaching.

In addition to delivering instruction in one or more Native American languages, these programs provide training to Native American language teachers and develop instructional materials for Native American language programs. Funds are given to restoration programs for a variety of activities that increase proficiency in at least one Native American language, such as language immersion

<sup>3</sup>Native American Languages Act of 1990 [NALA], Pub. L. No. 101-477, 25 U.S.C. §2903 (1990).

<sup>4</sup>*Id* at

programs, culture camps, Native American language teacher training programs, and the development of books and other media.

During the 114th Congress, the Committee held one oversight and two legislative hearings on Indian education. At these hearings, the Committee heard from witnesses on the importance of Native languages and culture to the academic and social success of Native students.

At an oversight hearing on May 13, 2015, the Bureau of Indian Education's witness highlighted the importance the agency, which is specifically tasked with American Indian and Alaska education, places on working with tribes to implement Native language programs that lead to fluency.<sup>5</sup> At a legislative hearing on April 6, 2016, witnesses representing tribal governments, state governments, and nonprofit organizations each spoke on the importance of Native language preservation and continuation.<sup>6</sup>

*In the 115th Congress, the Committee held an oversight hearing entitled "Examining Efforts to Maintain and Revitalize Native Languages for Future Generations."<sup>7</sup> ANA Commissioner Jeannie Hovland testified about the Agency's work to support Native language revitalization through NALA and NALPA grants.<sup>8</sup> She stated, "Language revitalization is essential for continuing Native American culture and strengthening self-determination." Other witnesses echoed Commissioner Hovland's observation, including Mashpee Wampanoag Vice Chairwoman Jessie Baird, who testified that "the preservation of our language is the preservation of ourselves."<sup>9</sup>*

#### *Preservation and Maintenance and the Esther Martinez Initiative Grant Programs*

The *Native American Languages Act of 1992* established the Preservation and Maintenance (P&M) grant program within the *Native American Programs Act of 1974* to ensure the survival of Native American languages. In 2006, Congress reauthorized the Native American languages grant program was last reauthorized by Congress through NALPA, and expanded it to include the Esther Martinez Initiative (EMI). The EMI supports and strengthens Native American language immersion programs, such as language nests, language survival schools, and language restoration programs. The NALPA authorization expired in 2012, but Congress has continued to fund the program through Appropriations Acts since then.

The HHS, through the ANA, administers grant funding under the *Native American Programs Act of 1974*. Language maintenance grant funding provides opportunities for grantees to assess, plan, develop, and implement projects to ensure the survival and continuing vitality of Native languages. The ANA has also formed a

<sup>5</sup> *Oversight Hearing on "Bureau of Indian Education: Examining Organizational Challenges in Transforming Educational Opportunities for Indian Children" Before the S. Comm. on Indian Affairs*, 114 Cong. 43 (2015) (statement of Bureau of Indian Education witness).

<sup>6</sup> *Legislative Hearing to receive testimony on S. 2304, S. 2468, S. 2580, and S. 2711*, 114 Cong. 13–35 (2016) (statements of Sandra Boham, President, Salish Kootenai College, Hon. Carlyle W. Begay, Arizona State Sen., Patricia Whitefoot, Pres. National Indian Education Association).

<sup>7</sup> *Oversight Hearing on "Examining Efforts to Maintain and Revitalized Native Languages for Future Generations" Before the S. Comm. on Indian Affairs*, 115 Cong. (2018).

<sup>8</sup> *Id.* at 8–10 (statement of Jeannie Hovland, Commissioner, Administration for Native Americans).

<sup>9</sup> *Id.* at 14 (statement of Jessie Little Doe Baird, Vice Chairwoman, Mashpee Wampanoag Tribe).

Native Languages Workgroup to ensure the program is meeting ANA goals and providing technical assistance to grantees and potential grantees.

Between 2010 and 2018, the ANA received 843 applications for the P&M and EMI programs. In FY2018, the ANA awarded over \$12,000,000 of funding for all Native American language grant activities and programs at the Agency.<sup>10</sup>

According to the “2012 Impact and Effectiveness of ANA Projects Report to Congress,”<sup>11</sup> the ANA evaluated 22 out of the 63 total language grantees’ projects from across Indian Country. The 2012 impact data showed that from these 22 projects a total of 178 language teachers were trained in teaching Native languages; 2,340 youth had increased their ability to speak a Native language or achieved fluency; and 2,586 adults had increased their ability to speak a Native language or achieved fluency.

The 2014 Impact and Effectiveness report documented that the ANA had evaluated 61 language grantees from across Indian Country, approximately one third of all language projects funded.<sup>12</sup> The 2014 impact data showed that from these 61 projects a total of 285 language teachers were trained in teaching Native languages; 4,582 youth had increased their ability to speak a Native language; 91 youth had achieved fluency; and 3,334 adults had increased their ability to speak a Native language or achieved fluency.

### *Improvements to the Current Grant Program*

#### *Duration of grants*

During Committee legislative hearings held on June 18, 2014, and November 18, 2015, the ANA stated that grantee interviews suggested that the duration of language grants from the current three-year time frame should be increased to up to five-years.<sup>13</sup> Commissioner Sparks further testified that, by expanding its authority to increase the duration of awards, projects would become more sustainable and yield increased results.<sup>14</sup> The P&M grants are currently awarded on a one-, two-, and three-year basis, and EMI grants are awarded on a three-year basis. The bill, S. 256 reflects ANA’s feedback from grantees and amends Section 803C(e)(2) of the *Native American Program Act of 1974* to extend these Native language grants to up to a five-year basis.

According to the 2014 testimony provided by Commissioner Sparks, the ANA completed a preliminary analysis of the effects that increased grant duration would have on the number of grant

<sup>10</sup>*Id.* at 11 (statement of Jeannie Hovland, Commissioner, Administration for Native Americans).

<sup>11</sup>Administration for Children and Families, Department of Health and Human Services, 2012 Impact and Effectiveness of Administration for Native American Projects: Report to Congress (2012).

<sup>12</sup>Administration for Children and Families, Department of Health and Human Services, 2014 Impact and Effectiveness of Administration for Native American Projects: Report to Congress (2014).

<sup>13</sup>*Legislative Hearing on S. 1948 and S. 2299 Before the S. Comm. on Indian Affairs*, 113 Cong. 8-9 (2014) (statement of Lillian Sparks, Commissioner, Administration for Native Americans); *Legislative Hearing on S. 410, S. 1163, and S. 1928 Before the S. Comm. on Indian Affairs*, 114 Cong. 6-7 (2015) (statement of Lillian Sparks Robinson, Commissioner, Administration for Native Americans).

<sup>14</sup>*Id.*

awards made each year.<sup>15</sup> Commissioner Sparks stated that she did not anticipate a significant decrease in total number of grants active each year but also noted that funding would shift from new project awards to awards for continuing projects.

Commissioner Sparks also testified that the ANA awarded an average of 16 new P&M grants each year for a total active grantee pool of 40 any given time.<sup>16</sup> For EMI grants, ANA awarded an average of six new grants per year for a total active grantee pool of approximately 18 at any given time. Commissioner Sparks estimated that new P&M grant awards would decrease by approximately five projects per grant award cycle and new EMI grant awards would decrease by an estimated two to three projects per grant award cycle.

Commissioner Sparks further reported that an analysis of the effects of the grant period length on the project revealed that, as the duration of the project increased, the impact of the project significantly increased.<sup>17</sup> Therefore, Commissioner Sparks stated the ANA believed increasing the duration of years would increase the number of individuals achieving fluency, the number of teachers trained, and the chances of a project's sustainability. Commissioner Sparks also stated that extending the length of the grants would allow grantees more time to find supplemental funding to support their program once the grant awards expired.

#### *Language nests and survival school student minimums*

During the November 18, 2015 Committee hearing, Commissioner Sparks stated that grantees requested lowering the criteria for student minimums.<sup>18</sup> By lowering the requirement for language nests from 10 to 5 students, and for survival schools from 15 to 10 students, Commissioner Sparks testified that more projects would be eligible in lower-populated and remote areas. S. 256 would amend Section 803C(b)(7) of the *Native American Program Act of 1974* to lower the requirement for the minimum number of children in language nests from 10 to 5 children and lower requirement for the minimum number of children in survival schools from 15 to 10 children.

#### LEGISLATIVE HISTORY

On January 29, 2019, Senator Udall, along with Senators Cortez Masto, Heinrich, Murkowski, Schatz, Smith, Tester, and Warren introduced S. 256. The bill was referred to the Committee on Indian Affairs. On February 6, 2019, the Committee met at a duly called business meeting to consider the bill. The bill was ordered to be reported favorably, without amendment, to the Senate by voice vote.

On January 30, 2019, Representative Ben Ray Luján introduced an identical House companion bill, H.R. 912. Representatives

<sup>15</sup> *Legislative Hearing on S. 1948 and S. 2299 Before the S. Comm. on Indian Affairs*, 113 Cong. 14 (2014) (statement of Lillian Sparks, Commissioner, Administration for Native Americans).

<sup>16</sup> *Legislative Hearing on S. 1948 and S. 2299 Before the S. Comm. on Indian Affairs*, 113 Cong. 9-11 (2014) (statement of Lillian Sparks, Commissioner, Administration for Native Americans).

<sup>17</sup> *Id.*

<sup>18</sup> *Legislative Hearing on S. 410, S. 1163, and S. 1928 Before the S. Comm. on Indian Affairs*, 114 Cong. 6 (2015) (statement of Lillian Sparks Robinson, Commissioner, Administration for Native Americans).

Cárdenas, Cole, Davids, DeFazio, Grijalva, Haaland, Kildee, McCollum, Moore, Napolitano, Holmes Norton, O'Halleran, Soto, Tipton, Torres Small, and Young (AK) joined Representative Luján as original co-sponsors of the bill. The bill was referred to the House Committee on Education and Labor but no further action has been taken at this time.

During the 115th Congress, Senator Udall introduced S.254 on February 1, 2017 with Senators Murkowski, Franken, Heinrich, Heitkamp, Schatz, and Tester as original cosponsors. On March 1, 2017, Senator Van Hollen joined as a cosponsor. The bill was referred to the Committee on Indian Affairs. On February 8, 2017, the Committee met at a duly called business meeting to consider the bill. The bill was ordered to be reported favorably, without amendment, to the Senate by voice vote.

On November 29, 2017, the bill passed the Senate with an amendment by unanimous consent. The amendment further amends the *Native American Programs Act of 1974* by striking "such sums" and authorizing \$13,000,000 for each FY beginning in 2019 through 2023. The bill, as amended, was referred to the House Committee on Education and the Workforce. No further action was taken on the measure.

On February 16, 2017, Representative Ben Ray Luján introduced H.R. 1169, a companion bill in the House of Representatives with 24 Democratic and Republican cosponsors. The bill was referred to the Committee on Education and the Workforce of the House of Representatives. No further action has been taken.

During the 114th Congress, Senator Udall introduced an identical reauthorization bill, S. 1163, on April 30, 2015, with Senators Murkowski, Franken, Heinrich, Heitkamp, Schatz and Tester as original cosponsors. The bill was referred to the Committee on Indian Affairs. On November 18, 2015, the Committee held a legislative hearing on the bill. On May 11, 2016, the Committee met at a duly called business meeting to consider the bill. The bill was ordered to be reported favorably, without amendment, to the Senate by voice vote.

The House of Representatives also considered an identical bill, H.R. 2174, during the 114th Congress. Representative Ben Ray Luján introduced that bill on April 30, 2015, with Representatives Young, McCollum, Cole, Grijalva, Honda, Pearce, Ruiz, and Roybal-Allard as original cosponsors. Representatives Huffman, Luján Grisham, and Adam Smith were added as cosponsors between May, 2015, and September 2015. The bill was referred to the Committee on Education and the Workforce of the House of Representatives. No further action was taken.

In the 113th Congress, Senator Johnson of South Dakota introduced a simple NALPA reauthorization bill, S. 2299. Senators Murkowski, Begich, Franken, Heinrich, Hirono, King, Schatz, Tester, and Udall were original cosponsors. Senator Walsh joined as a cosponsor on May 14, 2014. The bill was referred to the Committee on Indian Affairs. On June 18, 2014, Committee held a legislative hearing on the bill.

On July 30, 2014, the Committee met at a duly called business meeting to consider the bill. Senator Johnson of South Dakota offered two amendments, which were both adopted. The first amendment, in the nature of a substitute, altered Sec. 803C(e)(2) of the

Native American Program Act of 1974 to permit grants a life of three, four or five years and would eliminate the three-year requirement and Sec. 803C(b)(7) of the Native American Program Act of 1974 to lower the minimum number of children in language nests from 10 to 5 children and lower the minimum number of children in survival schools from 15 to 10 children. As amendments to the title must be done separately from a substitute amendment, the second amendment simply updated the title of the bill to reflect the changes made by the first amendment. The bill, as amended, was ordered to be favorably reported to the Senate by voice vote.

In the 112th Congress, S. 3546 was introduced by Senator Johnson (SD) with Senator Akaka as an original cosponsor. Senators Tester, Cantwell, Conrad, Franken, Inouye, and Udall (D-NM) joined as cosponsors later. On December 11, 2012, the Committee met at a duly called business meeting to consider the bill. S. 3546, was ordered to be favorably reported to the Senate by voice vote.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

*Section 1. Short title*

Section 1 sets forth the short title of the bill as the “Esther Martinez Native American Languages Programs Reauthorization Act.”

*Section 2. Native American languages grant program*

Section 2 changes the current requirement for the minimum number of enrollees in eligible survival schools from 15 to 10 students and language nests from 10 to 5 students. It further amends the provision on the length of the Preservation & M grants and the EMI grants from a maximum of three years to allow the grant awards lengths to expand to three, four, and five year durations.

*Section 3. Reauthorization of the Native American languages program*

Section 3 reauthorizes Sec. 816(e) of the Native American Programs Act of 1974 (42 U.S.C. 2992d(e)) by striking “such sums” and authorizing \$13,000,000 for each FY beginning in 2020 to 2024.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 11, 2019.*

Hon. JOHN HOEVEN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 256, the Esther Martinez Native American Languages Programs Reauthorization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jennifer Gray.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*S. 256—Esther Martinez Native American Languages Programs Reauthorization Act*

S. 256 would authorize the appropriation of \$13 million for each year from 2020 through 2024 for a grant program to preserve and maintain Native American languages. The authority to make those grants expired at the end of 2012. However, the Department of Health and Human Services has continued to allocate funds for these grants. In 2018, the most recent year for which data are available, that allocation was about \$10 million. The bill would establish a period of availability of up to five years for those grants and would allow grant recipients to serve fewer children per grant than previously. For this estimate, CBO assumes that S. 256 will be enacted before the beginning of fiscal year 2020, and that the authorized amounts will be appropriated each year. Estimated outlays are based on historical spending patterns. CBO estimates that implementing the bill would cost \$51 million over 2020 through 2024 and \$14 million after 2024. The costs of the legislation, detailed in Table 1, fall within budget function 500 (education, training, employment, and social services).

TABLE 1—S. 256 ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Authorization .....	0	13	13	13	13	13	65
Estimated Outlays .....	0	1	11	13	13	13	51

The CBO staff contact for this estimate is Jennifer Gray. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communication from the Executive Branch regarding S. 256.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 256 will have minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW

In compliance with the Standing Rules of the Senate and the Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.