

TO AMEND THE ALYCE SPOTTED BEAR AND WALTER SOBOLEFF COMMISSION ON NATIVE CHILDREN ACT TO EXTEND THE DEADLINE FOR A REPORT BY THE ALYCE SPOTTED BEAR AND WALTER SOBOLEFF COMMISSION ON NATIVE CHILDREN, AND FOR OTHER PURPOSES

JULY 26, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 438]

The Committee on Natural Resources, to whom was referred the bill (H.R. 438) to amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R.438 is to amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children.

BACKGROUND AND NEED FOR LEGISLATION

Chronic underfunding and insufficient access to federal grant programs slow the efforts of tribal governments to address the needs of Native American children.

The Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act¹ established a commission in the Office of Tribal Justice at the U.S. Department of Justice to conduct a comprehensive study of federal, state, and tribal programs that serve Native American Children. The Commission, comprised of members with

¹P.L. 114-244, 130 Stat. 981 (2016), <https://uscode.house.gov/statviewer.htm?volume=130&page=981> (not codified) (statutory compilation as amended through Pub. L. No.116-94 at <https://www.govinfo.gov/content/pkg/COMPS-12220/pdf/COMPS-12220.pdf>).

significant expertise in Indian Affairs, was required to submit a final report with its findings, conclusions, and recommendations.

The COVID–19 pandemic impacted the Commission’s ability to complete its work on schedule and limited traveling opportunities. H.R. 438 provides a two-year extension for the Alyce Spotted Bear and Walter Soboleff Commission on Native Children to publish its report and make policy and legislative recommendations or improvements for federal, state, and tribal programs that serve Native children.

COMMITTEE ACTION

H.R. 438 was introduced on January 21, 2021, by Representative Don Young (R–AK). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On May 20, 2021, the Subcommittee held a hearing on the bill. On May 26, 2021, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered. The bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

The U.S. Senate has acted on an identical companion bill, S. 325. Senator Lisa Murkowski (R–AK) introduced the bill on February 12, 2021, and the Senate referred the bill solely to the Senate Committee on Indian Affairs. On March 10, 2021, the Senate Committee met to consider the bill. No amendments were filed, and the bill was adopted and ordered favorably reported by voice vote. The Senate Committee reported the bill to the Senate on April 14, 2021.² On May 26, 2021, the Senate passed S. 325 without amendment by voice vote. On May 28, 2021, the House received the Senate-engrossed bill and held it at the desk.

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee for Indigenous Peoples of the United States held on May 20, 2021.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the

²S. REP. NO. 117–12 (2021), <https://www.congress.gov/117/crpt/srpt12/CRPT-117srpt12.pdf>.

Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee adopts as its own cost estimate the forthcoming cost estimate of the Director of the Congressional Budget Office, should such cost estimate be made available before House passage of the bill.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

The Committee notes that CBO's analysis of S. 325, the identical companion legislation, is available and shows the bill as having an insignificant net effect on direct spending and no effect on revenues.³

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

The Committee notes that CBO's analysis of S. 325, the identical companion legislation, is available and shows the bill as not creating any mandates for purposes of UMRA.⁴

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

³ <https://www.cbo.gov/system/files/2021-03/s325.pdf>.

⁴ *Id.*

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**ALYCE SPOTTED BEAR AND WALTER SOBOLEFF
COMMISSION ON NATIVE CHILDREN ACT**

* * * * *

SEC. 3. COMMISSION ON NATIVE CHILDREN.

(a) **IN GENERAL.**—There is established a commission, to be known as the “Alyce Spotted Bear and Walter Soboleff Commission on Native Children”.

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Commission shall be composed of 11 members, of whom—

(A) 3 shall be appointed by the President, in consultation with—

- (i) the Attorney General;
- (ii) the Secretary;
- (iii) the Secretary of Education; and
- (iv) the Secretary of Health and Human Services;

(B) 3 shall be appointed by the Majority Leader of the Senate, in consultation with the Chairperson of the Committee on Indian Affairs of the Senate;

(C) 1 shall be appointed by the Minority Leader of the Senate, in consultation with the Vice Chairperson of the Committee on Indian Affairs of the Senate;

(D) 3 shall be appointed by the Speaker of the House of Representatives, in consultation with the Chairperson of the Committee on Natural Resources of the House of Representatives; and

(E) 1 shall be appointed by the Minority Leader of the House of Representatives, in consultation with the Ranking Member of the Committee on Natural Resources of the House of Representatives.

(2) **REQUIREMENTS FOR ELIGIBILITY.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), each member of the Commission shall have significant experience and expertise in—

- (i) Indian affairs; and
- (ii) matters to be studied by the Commission, including—

(I) health care issues facing Native children, including mental health, physical health, and nutrition;

(II) Indian education, including experience with Bureau of Indian Education schools and public schools, tribally operated schools, tribal colleges or universities, early childhood education programs, and the development of extracurricular programs;

(III) juvenile justice programs relating to prevention and reducing incarceration and rates of recidivism; and

(IV) social service programs that are used by Native children and designed to address basic needs, such as food, shelter, and safety, including child protective services, group homes, and shelters.

(B) EXPERTS.—

(i) NATIVE CHILDREN.—1 member of the Commission shall—

(I) meet the requirements of subparagraph (A); and

(II) be responsible for providing the Commission with insight into and input from Native children on the matters studied by the Commission.

(ii) RESEARCH.—1 member of the Commission shall—

(I) meet the requirements of subparagraph (A); and

(II) have extensive experience in statistics or social science research.

(3) TERMS.—

(A) IN GENERAL.—Each member of the Commission shall be appointed for the life of the Commission.

(B) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) OPERATION.—

(1) CHAIRPERSON.—Not later than 15 days after the date on which all members of the Commission have been appointed, the Commission shall select 1 member to serve as Chairperson of the Commission.

(2) MEETINGS.—

(A) IN GENERAL.—The Commission shall meet at the call of the Chairperson.

(B) INITIAL MEETING.—The initial meeting of the Commission shall take place not later than 30 days after the date described in paragraph (1).

(3) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(4) RULES.—The Commission may establish, by majority vote, any rules for the conduct of Commission business, in accordance with this Act and other applicable law.

(d) NATIVE ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Commission shall establish a committee, to be known as the “Native Advisory Committee”.

(2) MEMBERSHIP.—

- (A) COMPOSITION.—The Native Advisory Committee shall consist of—
- (i) 1 representative of Indian tribes from each region of the Bureau of Indian Affairs who is 25 years of age or older; and
 - (ii) 1 Native Hawaiian who is 25 years of age or older.
- (B) QUALIFICATIONS.—Each member of the Native Advisory Committee shall have experience relating to matters to be studied by the Commission.
- (3) DUTIES.—The Native Advisory Committee shall—
- (A) serve as an advisory body to the Commission; and
 - (B) provide to the Commission advice and recommendations, submit materials, documents, testimony, and such other information as the Commission determines to be necessary to carry out the duties of the Commission under this section.
- (4) NATIVE CHILDREN SUBCOMMITTEE.—The Native Advisory Committee shall establish a subcommittee that shall consist of at least 1 member from each region of the Bureau of Indian Affairs and 1 Native Hawaiian, each of whom shall be a Native child, and have experience serving on the council of a tribal, regional, or national youth organization.
- (e) COMPREHENSIVE STUDY OF NATIVE CHILDREN ISSUES.—
- (1) IN GENERAL.—The Commission shall conduct a comprehensive study of Federal, State, local, and tribal programs that serve Native children, including an evaluation of—
 - (A) the impact of concurrent jurisdiction on child welfare systems;
 - (B) the barriers Indian tribes and Native Hawaiians face in applying, reporting on, and using existing public and private grant resources, including identification of any Federal cost-sharing requirements;
 - (C) the obstacles to nongovernmental financial support, such as from private foundations and corporate charities, for programs benefitting Native children;
 - (D) the issues relating to data collection, such as small sample sizes, large margins of error, or other issues related to the validity and statistical significance of data on Native children;
 - (E) the barriers to the development of sustainable, multidisciplinary programs designed to assist high-risk Native children and families of those high-risk Native children;
 - (F) cultural or socioeconomic challenges in communities of Native children;
 - (G) any examples of successful program models and use of best practices in programs that serve children and families;
 - (H) the barriers to interagency coordination on programs benefitting Native children; and
 - (I) the use of memoranda of agreement or interagency agreements to facilitate or improve agency coordination, including the effects of existing memoranda or interagency agreements on program service delivery and efficiency.

(2) COORDINATION.—In conducting the study under paragraph (1), the Commission shall, to the maximum extent practicable—

(A) to avoid duplication of efforts, collaborate with other workgroups focused on similar issues, such as the Task Force on American Indian/Alaska Native Children Exposed to Violence of the Attorney General; and

(B) to improve coordination and reduce travel costs, use available technology.

(3) RECOMMENDATIONS.—Taking into consideration the results of the study under paragraph (1) and the analysis of any existing data relating to Native children received from Federal agencies, the Commission shall—

(A) develop recommendations for goals, and plans for achieving those goals, for Federal policy relating to Native children in the short-, mid-, and long-term, which shall be informed by the development of accurate child well-being measures, except that the Commission shall not consider or recommend the recognition or the establishment of a government-to-government relationship with—

(i) any entity not recognized on or before the date of enactment of this Act by the Federal Government through an Act of Congress, Executive action, judicial decree, or any other action; or

(ii) any entity not included in the list authorized pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.);

(B) make recommendations on necessary modifications and improvements to programs that serve Native children at the Federal, State, and tribal levels, on the condition that the recommendations recognize the diversity in cultural values, integrate the cultural strengths of the communities of the Native children, and will result in—

(i) improvements to the child welfare system that—

(I) reduce the disproportionate rate at which Native children enter child protective services and the period of time spent in the foster system;

(II) increase coordination among social workers, police, and foster families assisting Native children while in the foster system to result in the increased safety of Native children while in the foster system;

(III) encourage the hiring and retention of licensed social workers in Native communities;

(IV) address the lack of available foster homes in Native communities; and

(V) reduce truancy and improve the academic proficiency and graduation rates of Native children in the foster system;

(ii) improvements to the mental and physical health of Native children, taking into consideration the rates of suicide, substance abuse, and access to nutrition and health care, including—

(I) an analysis of the increased access of Native children to Medicaid under the Patient Protection

and Affordable Care Act (Public Law 111-148) and the effect of that increase on the ability of Indian tribes and Native Hawaiians to develop sustainable health programs; and

(II) an evaluation of the effects of a lack of public sanitation infrastructure, including in-home sewer and water, on the health status of Native children;

(iii) improvements to educational and vocational opportunities for Native children that will lead to—

(I) increased school attendance, performance, and graduation rates for Native children across all educational levels, including early education, post-secondary, and graduate school;

(II) localized strategies developed by educators, tribal and community leaders, and law enforcement to prevent and reduce truancy among Native children;

(III) scholarship opportunities at a Tribal College or University and other public and private postsecondary institutions;

(IV) increased participation of the immediate families of Native children;

(V) coordination among schools and Indian tribes that serve Native children, including in the areas of data sharing and student tracking;

(VI) accurate identification of students as Native children; and

(VII) increased school counseling services, improved access to quality nutrition at school, and safe student transportation;

(iv) improved policies and practices by local school districts that would result in improved academic proficiency for Native children;

(v) increased access to extracurricular activities for Native children that are designed to increase self-esteem, promote community engagement, and support academic excellence while also serving to prevent unplanned pregnancy, membership in gangs, drug and alcohol abuse, and suicide, including activities that incorporate traditional language and cultural practices of Indians and Native Hawaiians;

(vi) taking into consideration the report of the Indian Law and Order Commission issued pursuant to section 15(f) of the Indian Law Enforcement Reform Act (25 U.S.C. 2812(f)), improvements to Federal, State, and tribal juvenile justice systems and detention programs—

(I) to provide greater access to educational opportunities and social services for incarcerated Native children;

(II) to promote prevention and reduce incarceration and recidivism rates among Native children;

(III) to identify intervention approaches and alternatives to incarceration of Native children;

(IV) to incorporate families and the traditional cultures of Indians and Native Hawaiians in the juvenile justice process, including through the development of a family court for juvenile offenses; and

(V) to prevent unnecessary detentions and identify successful reentry programs;

(vii) expanded access to a continuum of early development and learning services for Native children from prenatal to age 5 that are culturally competent, support Native language preservation, and comprehensively promote the health, well-being, learning, and development of Native children, such as—

(I) high quality early care and learning programs for children starting from birth, including Early Head Start, Head Start, child care, and preschool programs;

(II) programs, including home visiting and family resource and support programs, that increase the capacity of parents to support the learning and development of the children of the parents, beginning prenatally, and connect the parents with necessary resources;

(III) early intervention and preschool services for infants, toddlers, and preschool-aged children with developmental delays or disabilities; and

(IV) professional development opportunities for Native providers of early development and learning services;

(viii) the development of a system that delivers wrap-around services to Native children in a way that is comprehensive and sustainable, including through increased coordination among Indian tribes, schools, law enforcement, health care providers, social workers, and families;

(ix) more flexible use of existing Federal programs, such as by—

(I) providing Indians and Native Hawaiians with more flexibility to carry out programs, while maintaining accountability, minimizing administrative time, cost, and expense and reducing the burden of Federal paperwork requirements; and

(II) allowing unexpended Federal funds to be used flexibly to support programs benefitting Native children, while taking into account—

(aa) the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 note; 106 Stat. 2302);

(bb) the Coordinated Tribal Assistance Solicitation program of the Department of Justice;

(cc) the Federal policy of self-determination; and

(dd) any consolidated grant programs; and

(x) solutions to other issues that, as determined by the Commission, would improve the health, safety, and well-being of Native children;

(C) make recommendations for improving data collection methods that consider—

(i) the adoption of standard definitions and compatible systems platforms to allow for greater linkage of data sets across Federal agencies;

(ii) the appropriateness of existing data categories for comparative purposes;

(iii) the development of quality data and measures, such as by ensuring sufficient sample sizes and frequency of sampling, for Federal, State, and tribal programs that serve Native children;

(iv) the collection and measurement of data that are useful to Indian tribes and Native Hawaiians;

(v) the inclusion of Native children in longitudinal studies; and

(vi) tribal access to data gathered by Federal, State, and local governmental agencies; and

(D) identify models of successful Federal, State, and tribal programs in the areas studied by the Commission.

(f) REPORT.—Not later than **[3 years]** *5 years* after the date on which all members of the Commission are appointed and amounts are made available to carry out this Act, the Commission shall submit to the President, the Committee on Natural Resources of the House of Representatives, the Committee on Indian Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate, a report that contains—

(1) a detailed statement of the findings and conclusions of the Commission; and

(2) the recommendations of the Commission for such legislative and administrative actions as the Commission considers to be appropriate.

(g) POWERS.—

(1) HEARINGS.—

(A) IN GENERAL.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers to be advisable to carry out the duties of the Commission under this section, except that the Commission shall hold not less than 5 hearings in Native communities.

(B) PUBLIC REQUIREMENT.—The hearings of the Commission under this paragraph shall be open to the public.

(2) WITNESS EXPENSES.—

(A) IN GENERAL.—A witness requested to appear before the Commission shall be paid the same fees and allowances as are paid to witnesses under section 1821 of title 28, United States Code.

(B) PER DIEM AND MILEAGE.—The fees and allowances for a witness shall be paid from funds made available to the Commission.

(3) INFORMATION FROM FEDERAL, TRIBAL, AND STATE AGENCIES.—

(A) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers to be necessary to carry out this section.

(B) TRIBAL AND STATE AGENCIES.—The Commission may request the head of any tribal or State agency to provide to the Commission such information as the Commission considers to be necessary to carry out this Act.

(4) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(5) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property related to the purpose of the Commission.

(h) COMMISSION PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(2) DETAIL OF FEDERAL EMPLOYEES.—

(A) IN GENERAL.—On the affirmative vote of $\frac{2}{3}$ of the members of the Commission—

(i) the Attorney General, the Secretary, the Secretary of Education, and the Secretary of the Health and Human Services shall each detail, without reimbursement, 1 or more employees of the Department of Justice, the Department of the Interior, the Department of Education, and the Department of Health and Human Services; and

(ii) with the approval of the appropriate Federal agency head, an employee of any other Federal agency may be, without reimbursement, detailed to the Commission.

(B) EFFECT ON DETAILEES.—Detail under this paragraph shall be without interruption or loss of civil service status, benefits, or privileges.

(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—

(A) IN GENERAL.—On request of the Commission, the Attorney General shall provide to the Commission, on a reimbursable basis, reasonable and appropriate office space, supplies, and administrative assistance.

(B) NO REQUIREMENT FOR PHYSICAL FACILITIES.—The Administrator of General Services shall not be required to locate a permanent, physical office space for the operation of the Commission.

(4) MEMBERS NOT FEDERAL EMPLOYEES.—No member of the Commission, the Native Advisory Committee, or the Native Children Subcommittee shall be considered to be a Federal employee.

(i) TERMINATION OF COMMISSION.—The Commission shall terminate 90 days after the date on which the Commission submits the report under subsection (f).

(j) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission, the Native Advisory Committee, or the Native Children Subcommittee.

(k) EFFECT.—This Act shall not be construed to recognize or establish a government-to-government relationship with—

(1) any entity not recognized on or before the date of enactment of this Act by the Federal Government through an Act of Congress, Executive action, judicial decree, or any other action; or

(2) any entity not included in the list authorized pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.).

SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

