

115TH CONGRESS
2D SESSION

H. R. 6185

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 HOUSE OF REPRESENTATIVES

JUNE 21, 2018

Ms. MCCOLLUM (for herself, Mr. COLE, Mr. GRIJALVA, Mr. YOUNG of Alaska, and Mr. HUFFMAN) introduced the following bill; which was referred to the Committee on Education and the Workforce

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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. INDIAN EDUCATION PROGRAM STUDENT COUNT**
2 **UPDATE.**

3 The Act of April 16, 1934 (25 U.S.C. 5342 et seq.)
4 (commonly referred to as the Johnson-O'Malley Act), is
5 amended by adding at the end the following:

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

7 “(a) DEFINITIONS.—For the purposes of this Act,
8 the following definitions apply:

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

12 “(2) ELIGIBLE ENTITY.—The term ‘eligible en-
13 tity’ means an entity that is eligible to apply for a
14 contract for a supplemental or operational support
15 program under this Act, as outlined in section 1.

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

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

25 “(5) NEW CONTRACTING PARTY.—The term
26 ‘new contracting party’ means an entity that enters

1 into a contract under this Act after the date of en-
2 actment of the JOM Modernization Act.

3 “(6) SECRETARY.—The term ‘Secretary’ means
4 the Secretary of the Interior.

5 “(b) DETERMINATION OF THE NUMBER OF ELIGI-
6 BLE INDIAN STUDENTS.—

7 “(1) INITIAL DETERMINATIONS.—

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

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

15 “(i) PRELIMINARY REPORT.—Not
16 later than 180 days after the date of en-
17 actment of the JOM Modernization Act,
18 the Secretary shall publish a preliminary
19 report describing the number of eligible In-
20 dian students served or potentially served
21 by each eligible entity, using the most ap-
22 plicable and accurate data (as determined
23 by the Secretary in consultation with eligi-
24 ble entities) from the fiscal year preceding

the fiscal year for which the initial determination is to be made from—

“(I) the Bureau of the Census;

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

“(III) the Office of Indian Education of the Department of Education.

“(ii) DATA RECONCILIATION.—To improve the accuracy of the preliminary report described in clause (i) prior to publishing, the Secretary shall reconcile the data described in the preliminary report with—

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

“(II) identifiable tribal enrollment information.

“(iii) COMMENT PERIOD.—After publishing the preliminary report under clause

1 (i) in accordance with clause (ii), the Sec-
2 retary shall establish a 60-day comment
3 period to gain feedback about the prelimi-
4 nary report from eligible entities, which the
5 Secretary shall take into consideration in
6 preparing the final report described in
7 clause (iv).

8 “(iv) FINAL REPORT.—Not later than
9 120 days after concluding the consultation
10 described in clause (iii), the Secretary shall
11 publish a final report on the initial deter-
12 mination of the number of eligible Indian
13 students served or potentially served by
14 each eligible entity, including justification
15 for not including any feedback gained dur-
16 ing such consultation, if applicable.

17 “(2) SUBSEQUENT ACADEMIC YEARS.—For
18 each academic year following the fiscal year for
19 which an initial determination is made under para-
20 graph (1) to determine the number of eligible Indian
21 students served or potentially served by a con-
22 tracting party, the Secretary shall determine the
23 number of eligible Indian students served by the
24 contracting party based on the reported eligible In-

1 dian student count numbers identified through the
2 reporting process described in subsection (c).

3 “(c) CONTRACTING PARTY STUDENT COUNT RE-
4 PORTING COMPLIANCE.—

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

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

19 “(3) NOTICE.—The Secretary shall provide con-
20 tracting parties with timely information relating
21 to—

22 “(A) initial and final reporting deadlines;
23 and

24 “(B) the consequences of failure to comply
25 outlined in paragraph (2).

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

6 “(d) ANNUAL REPORT.—

7 “(1) IN GENERAL.—The Secretary shall pre-
8 pare an annual report, including the most recent de-
9 termination of the number of eligible Indian stu-
10 dents served by each contracting party, rec-
11 ommendations on appropriate funding levels for the
12 program based on such determination, 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 Education
2 and the Workforce of the House of Rep-
3 resentatives; 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 “(e) HOLD HARMLESS.—

14 “(1) INITIAL HOLD HARMLESS.—

15 “(A) IN GENERAL.—Except as provided
16 under subparagraph (B) and subject to sub-
17 paragraphs (C) and (D), for a fiscal year, an
18 existing contracting party shall not receive an
19 amount under this Act that is less than the
20 amount that such existing contracting party re-
21 ceived under this Act for the fiscal year pre-
22 ceding the date of enactment of the JOM Mod-
23 ernization Act.

24 “(B) EXCEPTIONS.—

1 “(i) IN GENERAL.—An existing con-
2 tracting party shall receive an amount
3 under this Act for a fiscal year that is less
4 than the amount that the existing con-
5 tracting party received under this Act for
6 the fiscal year preceding the date of enact-
7 ment of the JOM Modernization Act, if
8 one or more of the following conditions is
9 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 en-
19 tered into under this Act or has other-
20 wise violated Federal law.

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

1 number of eligible Indian students
2 served by the existing contracting
3 party in the fiscal year preceding the
4 date of enactment of the JOM Mod-
5 ernization Act.

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

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

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

4 “(2) MAXIMUM DECREASE AFTER 4 YEARS.—
5 Beginning 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
9 the previous fiscal year.

10 “(f) FUNDING ALLOCATION AND REFORM.—

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

21 “(A) by the Bureau of Indian Education;
22 or

23 “(B) under title VI of the Elementary and
24 Secondary Education Act of 1965 (20 U.S.C.
25 7401 et seq.).

1 “(2) INCREASES IN PROGRAM FUNDING.—

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

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

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

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

20 “(g) INCREASED GEOGRAPHICAL AND TRIBAL PAR-
21 TICIPATION IN THE JOHNSON-O’MALLEY SUPPLE-
22 MENTARY EDUCATION PROGRAM.—To the maximum ex-
23 tent practicable, the Secretary shall consult with Indian
24 tribes and contact State educational agencies, local edu-
25 cational agencies, and Alaska Native organizations that

1 have not previously entered into a contract under this
2 Act—

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

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

9 “(h) RULEMAKING.—

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

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

21 “(B) determine, as necessary, how the
22 funding formula described in section 273.31 of
23 title 25, Code of Federal Regulations (as in ef-
24 fect on the day before the date of enactment of
25 the JOM Modernization Act) may be clarified

1 and revised to ensure full participation of con-
2 tracting parties and provide clarity on the fund-
3 ing process under this Act; and

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

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

14 “(i) STUDENT PRIVACY.—The Secretary shall ensure
15 that data is collected and each report is prepared under
16 this section in a manner that protects the rights of eligible
17 Indian students in accordance with section 444 of the
18 General Education Provisions Act (commonly referred to
19 as the Family Educational Rights and Privacy Act of
20 1974) (20 U.S.C. 1232g).

21 “(j) GAO REPORT.—Not later than 18 months after
22 the final report described in subsection (b)(1)(B)(iv) is
23 published, the Comptroller General shall—

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

4 “(A) the accuracy of the determinations of
5 the number of eligible Indian students under
6 this section;

7 “(B) the communication between the Bu-
8 reau of Indian Education and contracting par-
9 ties; and

10 “(C) the efforts by the Bureau of Indian
11 Education to ensure accurate and sufficient dis-
12 tribution of funding for Indian students;

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

15 “(A) the Committee on Indian Affairs of
16 the Senate;

17 “(B) the Subcommittee on Interior, Envi-
18 ronment, and Related Agencies of the Com-
19 mittee on Appropriations of the Senate;

20 “(C) the Subcommittee on Indian, Insular
21 and Alaska Native Affairs of the Committee on
22 Natural Resources of the House of Representa-
23 tives; and

24 “(D) the Subcommittee on Interior, Envi-
25 ronment, and Related Agencies of the Com-

1 mittee on Appropriations of the House of Rep-
2 resentatives; and

3 “(3) make such report publicly available.

4 “(k) EFFECT.—Nothing in this section—

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

7 “(2) replaces or diminishes the effect of regula-
8 tions to carry out this Act existing on the day before
9 the date of enactment of the JOM Modernization
10 Act, unless expressly provided in this section.”.

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