

114TH CONGRESS
2D SESSION

S. 2842

To amend and reform the Johnson-O'Malley Act to award contracts to certain tribal organizations, Indian corporations, school districts, States, and consortia of tribal organizations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2016

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

A BILL

To amend and reform the Johnson-O'Malley Act to award contracts to certain tribal organizations, Indian corporations, school districts, States, and consortia of tribal organizations, 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. SUPPLEMENTAL INDIAN EDUCATION PROGRAM**
 2 **MODERNIZATION.**

3 The Act of April 16, 1934 (25 U.S.C. 452 et seq.)
 4 (commonly known as the “Johnson-O’Malley Act”), is
 5 amended by adding at the end the following:

6 **“SEC. 7. SUPPLEMENTAL INDIAN EDUCATION PROGRAM**
 7 **MODERNIZATION.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) ELEMENTARY SCHOOL.—The term ‘ele-
 10 mentary school’ has the meaning given the term in
 11 section 8101 of the Elementary and Secondary Edu-
 12 cation Act of 1965.

13 “(2) ELIGIBLE ENTITY.—The term ‘eligible en-
 14 tity’ means an entity that educates or serves Indian
 15 students and is—

16 “(A) an Indian tribe;

17 “(B) a tribal organization;

18 “(C) an Indian corporation;

19 “(D) a school district;

20 “(E) a State; or

21 “(F) a consortium of any of the entities
 22 described in subparagraphs (A) through (E).

23 “(3) ELIGIBLE INDIAN STUDENT.—The term
 24 ‘eligible Indian student’ means an individual that—

25 “(A) attends a public school that is not op-
 26 erated by the Bureau of Indian Education;

1 “(B) is not younger than 3 years of age;

2 “(C) is not in a grade higher than 12th
3 grade; and

4 “(D) is an Indian (as defined in section
5 6151 of the Elementary and Secondary Edu-
6 cation Act of 1965 (20 U.S.C. 7491)).

7 “(4) INDIAN TRIBE.—The term ‘Indian tribe’
8 has the meaning given the term in section 4 of the
9 Indian Self-Determination and Education Assistance
10 Act (25 U.S.C. 450b).

11 “(5) SECONDARY SCHOOL.—The term ‘sec-
12 ondary school’ has the meaning given the term in
13 section 8101 of the Elementary and Secondary Edu-
14 cation Act of 1965.

15 “(6) SECRETARY.—The term ‘Secretary’ means
16 the Secretary of the Interior, acting through the As-
17 sistant Secretary for Indian Affairs.

18 “(7) TRIBAL ORGANIZATION.—The term ‘tribal
19 organization’ has the meaning given the term in sec-
20 tion 4 of the Indian Self-Determination and Edu-
21 cation Assistance Act (25 U.S.C. 450b).

22 “(b) ESTABLISHMENT.—The Secretary, in coordina-
23 tion with the Director of the Bureau of Indian Education,
24 shall establish a program to enter into contracts and to
25 monitor and review contractual obligations with eligible

1 entities to provide educational benefits to eligible Indian
2 students.

3 “(c) USES OF FUNDS.—An eligible entity that enters
4 into a contract under subsection (b) shall use the funds
5 available under the contract for the educational benefit of
6 eligible Indian students—

7 “(1) to establish and carry out programs, or to
8 expand and carry out programs in existence before
9 the period of time covered by the contract, to pro-
10 vide—

11 “(A) remedial instruction, counseling, and
12 cultural programs;

13 “(B) courses related to science, technology,
14 engineering, and mathematics;

15 “(C) school supplies and other items that
16 enable students to participate in curricular and
17 extra-curricular programs; or

18 “(D) activities that were available to In-
19 dian students under contracts entered into
20 under this Act before October 1, 2012;

21 “(2) to establish targeted, culturally sensitive,
22 dropout prevention activities; and

23 “(3) to purchase equipment to facilitate—

24 “(A) training for professional trade skills;

25 and

1 “(B) intensified college preparation pro-
2 grams.

3 “(d) COMPUTATION OF AWARDS.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (3), the Secretary shall base the amount that
6 an eligible entity receives under a contract entered
7 into under subsection (b) for any fiscal year on the
8 number of eligible Indian students of the eligible en-
9 tity, as determined by the Secretary under para-
10 graph (2).

11 “(2) DETERMINATION OF NUMBER OF ELIGI-
12 BLE INDIAN STUDENTS.—

13 “(A) IN GENERAL.—The Secretary shall
14 determine the number of eligible Indian stu-
15 dents of an eligible entity in accordance with
16 this paragraph.

17 “(B) INITIAL DETERMINATION.—Not later
18 than 1 year after the date of enactment of this
19 section, the Secretary shall publish a report de-
20 scribing the number of potentially eligible In-
21 dian students of each eligible entity, using data
22 described in subparagraph (D) from, as deter-
23 mined by the Secretary in consultation with In-
24 dian tribes, after cross-verification of the data,
25 the most applicable, accurate, and current of—

1 “(i) the Bureau of the Census;

2 “(ii) the National Center for Edu-
3 cation Statistics; or

4 “(iii) the Office of Indian Education
5 of the Department of Education.

6 “(C) RECONCILIATION.—

7 “(i) IN GENERAL.—After publishing
8 the report under subparagraph (B), the
9 Secretary, in coordination with the Direc-
10 tor of the Bureau of Indian Education,
11 shall consult with the entities described in
12 clause (ii)—

13 “(I) to establish a process to rec-
14 oncile the data described in the report
15 published under subparagraph (B)
16 with—

17 “(aa) data described in sub-
18 paragraph (D) of entities party
19 to a contract under subsection
20 (b); and

21 “(bb) tribal enrollment in-
22 formation; and

23 “(II) to determine an accurate
24 number of eligible Indian students of
25 each eligible entity.

1 “(ii) ENTITIES DESCRIBED.—The en-
2 tities described in this clause are—

3 “(I) entities party to a contract
4 under subsection (b); and

5 “(II) eligible entities that may
6 potentially enter into contracts under
7 subsection (b) with a significant num-
8 ber of eligible Indian students but
9 that have not previously entered into
10 a contract under this Act.

11 “(D) DATA USE.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), the Secretary shall use data from not
14 earlier than the fiscal year preceding the
15 fiscal year for which an eligible entity is
16 applying for a contract under subsection
17 (b) to determine the number of eligible In-
18 dian students.

19 “(ii) NEW CONTRACTORS.—To deter-
20 mine the number of eligible Indian stu-
21 dents of an entity party to a contract
22 under subsection (b) that the Secretary
23 recognized as an eligible entity during or
24 after fiscal year 2012, the Secretary shall,
25 for the first year of the period of time cov-

1 ered by the contract, use data of the school
2 districts served by the entity for the fiscal
3 year for which the entity is applying for a
4 contract under subsection (b).

5 “(3) HOLD HARMLESS.—An eligible entity that
6 educates or serves eligible Indian students attending
7 a public school that has been afforded supplemental
8 services under a contract under this Act that took
9 effect during or before fiscal year 1995 shall receive
10 an amount under a contract entered into under sub-
11 section (b) equal to or greater than the amount that
12 the eligible entity would have received under the con-
13 tract entered into under this Act during or before
14 fiscal year 1995—

15 “(A) for a period of time ending not sooner
16 than 2 years after the date of enactment of this
17 section; or

18 “(B) if funds made available under a con-
19 tract entered into under subsection (b) have not
20 increased during the period beginning on the
21 date of entrance into the contract and ending
22 on the date that is 2 years after the date of en-
23 actment of this section, until funds made avail-
24 able under the contract increase.

25 “(4) FUNDING REFORM.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), the Secretary shall submit to Con-
3 gress recommendations for legislation to provide
4 resources to restore the amount of funds avail-
5 able through contracts under this Act per In-
6 dian student to the amount of funds available
7 through contracts under this Act per Indian
8 student during fiscal year 1995.

9 “(B) EXCLUSIONS.—Recommendations de-
10 scribed in subparagraph (A) shall not include
11 recommendations relating to the reallocation of
12 funds made available to carry out contracts
13 under this Act—

14 “(i) by the Director of the Bureau of
15 Indian Education; or

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

19 “(e) ADDITIONAL CONSIDERATIONS.—

20 “(1) GEOGRAPHIC COVERAGE AND ENHANCED
21 PARTICIPATION.—In entering into contracts under
22 subsection (b), the Secretary shall, to the maximum
23 extent practicable, ensure—

24 “(A) full geographic coverage; and

1 “(B) the full participation of eligible enti-
2 ties.

3 “(2) INCREASED PARTICIPATION OF ELIGIBLE
4 ENTITIES.—To the maximum extent practicable, the
5 Secretary shall—

6 “(A) contact and consult with Indian
7 tribes and school districts with significant popu-
8 lations of eligible Indian students that have not
9 previously contracted under this Act; and

10 “(B) determine the interest in and eligi-
11 bility for administering services under this Act
12 of the Indian tribes and school districts de-
13 scribed in subparagraph (A).

14 “(3) COMPLEMENTARY PROGRAM PARTICI-
15 PANTS.—In entering into contracts under subsection
16 (b), the Secretary may give preference to a consor-
17 tium of tribal organizations, including a consortium
18 of tribal organizations that includes a Tribal College
19 or University (as defined in section 316(b) of the
20 Higher Education Act of 1965 (20 U.S.C.
21 1059c(b))), to encourage as many students and pro-
22 fessionals as possible to benefit from the program
23 established under subsection (b).

24 “(f) ANNUAL REPORT.—

1 “(1) IN GENERAL.—The Secretary shall pre-
2 pare an annual assessment of the program estab-
3 lished under subsection (b)—

4 “(A) to be included in the budget request
5 of the Department of the Interior for each fis-
6 cal year; and

7 “(B) to submit to—

8 “(i) the Committee on Indian Affairs
9 of the Senate;

10 “(ii) the Subcommittee on Interior,
11 Environment, and Related Agencies of the
12 Committee on Appropriations of the Sen-
13 ate;

14 “(iii) the Committee on Natural Re-
15 sources of the House of Representatives;
16 and

17 “(iv) the Subcommittee on Interior,
18 Environment, and Related Agencies of the
19 Committee on Appropriations of the House
20 of Representatives.

21 “(2) MANNER OF PREPARATION.—The Sec-
22 retary shall prepare the report under paragraph (1)
23 in a manner to prevent or minimize new administra-
24 tive burdens on recipients of funds under this sec-

1 tion, including on activities or services provided by
2 recipients of funds under this section.

3 “(g) STUDENT PRIVACY.—The Secretary shall ensure
4 that data is collected and each report is prepared under
5 this section in a manner that protects the rights of eligible
6 Indian students under section 444 of the General Edu-
7 cation Provisions Act (20 U.S.C. 1232g).

8 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Secretary such
10 sums as are necessary to carry out this section.”.

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