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SENATE

{ REPORT  
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PROVIDING A COMPREHENSIVE FRAMEWORK TO IMPROVE NATIVE AMERICAN EDUCATION—ONE THAT INCORPORATES A WIDE RANGE OF STRATEGIES TO STRENGTHEN LANGUAGE AND CULTURE EDUCATION, LOCAL ACCESS AND CONTROL, AND TEACHER TRAINING AND RECRUITMENT

DECEMBER 21, 2012.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1262]

The Committee on Indian Affairs, to which was referred the bill (S. 1262) to improve Indian education, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

#### PURPOSE

The purpose of S. 1262 is to provide a comprehensive framework to improve Native American education—one that incorporates a wide range of strategies to strengthen language and culture education, local access and control, and teacher training and recruitment.

#### BACKGROUND AND HISTORY

The U.S. has had a longstanding involvement in the education of Native peoples. In 1775, The Continental Congress appropriated funds to pay expenses of 10 Indian students at Dartmouth College.<sup>1</sup>

From the Revolution until after the Civil War, the federal government provided for Indian education either by directly funding teachers or schools on a tribe-by-tribe basis pursuant to treaty provisions or by funding religious and other charitable groups to establish schools where they saw fit. The first Indian treaty providing for any form of education for a tribe—in this case, vocational—was

<sup>1</sup> Worthington Chauncey Ford, ed., *Journals of the Continental Congress, 1774–1789, Vol. II, 1775, May 10–September 20* (Washington: GPO, 1905), pp. 176–177. Congress's stated intent was to keep the students from returning to their homes in British Canada.

in 1794.<sup>2</sup> The first treaty providing for academic instruction for a tribe was in 1803.<sup>3</sup> Altogether over 150 treaties with individual tribes provided for instructors, teachers, or schools, whether vocational, academic, or both, either permanently or for a limited period of time.<sup>4</sup> The first federal statute authorizing appropriations to “promote civilization” among Indian tribes was the Indian Trade and Intercourse Act of 1793,<sup>5</sup> but the Civilization Act of 1819 was the first authorization and appropriation specifically for instruction of Indian children near frontier settlements in reading, writing, and arithmetic.<sup>6</sup> Civilization Act funds were expended through contracts with missionary and benevolent societies. Besides treaty schools and “mission” schools, some additional schools were initiated and funded directly by Indian tribes. The state of New York also operated schools for its Indian tribes. The total of such treaty, mission, tribal, and New York schools reached into the hundreds by the Civil War.<sup>7</sup>

After the Civil War, the U.S. government began to create a federal Indian school system, with schools not only funded but also constructed and operated by the Bureau of Indian Affairs (BIA)<sup>8</sup> with central policies and oversight.<sup>9</sup> In 1869, the Board of Indian Commissioners—a federally appointed board that jointly controlled with Interior the disbursement of certain funds for Indians<sup>10</sup>—recommended the establishment of government schools and teachers.<sup>11</sup> Building upon prior programs, in 1870 Congress passed the first general appropriation for Indian schools.<sup>12</sup> The initial appropriation was \$100,000, but both the amount appropriated and the number of schools operated by the BIA rose swiftly thereafter.<sup>13</sup> The BIA created both boarding and day schools, including off-reservation industrial boarding schools on the model of the Carlisle

<sup>2</sup>Treaty with the Oneida, Etc., Art. III, December 2, 1794, 7 Stat. 47, 48. The United States agreed not only to construct gristmills and sawmills for the Oneida, Tuscarora, and Stockbridge tribes but also to send persons to instruct the tribes in their use. See also Alice C. Fletcher, *Indian Education and Civilization*, U.S. Bureau of Education Special Report, Sen. Ex. Doc. 95, 48th Cong., 2nd sess. (Washington: GPO, 1888), p. 162.

<sup>3</sup>Treaty with the Kaskaskia, Art. 3d, August 13, 1803, 7 Stat. 78, 79.

<sup>4</sup>Nell Jessup Newton, ed.-in-chief, *Cohen's Handbook of Federal Indian Law 2005 Edition* (Newark, NJ: LexisNexis Matthew Bender, 2005), p. 1356. Congress ended treaty-making with Indian tribes in 1871.

<sup>5</sup>Sec. 9, Act of March 1, 1793, Chap. 19, 2nd Cong., 2nd sess., 1 Stat. 329, 331. As civilizing factors, the section specifically authorizes domestic animals, farming equipment, goods, money, and resident agents, but not teachers or schools.

<sup>6</sup>Act of March 3, 1819, Chap. 85, 15th Cong., 2nd sess., 3 Stat. 516. Previous appropriations for Indian affairs would have funded education only for children of tribes that signed treaties providing for education.

<sup>7</sup>Fletcher, *Indian Education and Civilization*, p. 197.

<sup>8</sup>The Bureau of Indian Affairs (BIA), which housed the former Office of Indian Education Programs (OIEP), was responsible for Indian education programs. In 2006, the Secretary of the Interior moved the OIEP out of the BIA and made it an agency equivalent to the BIA, renaming it the Bureau of Indian Education (BIE). Both bureaus are under the Assistant Secretary—Indian Affairs. For the purposes of this Committee report, BIA and BIE will be used interchangeably.

<sup>9</sup>Szasz, Margaret Connell, and Ryan, Carmelita, “American Indian Education,” in Wilcomb E. Washburn, vol. ed., *Handbook of North American Indians, Vol. 4, Indian-White Relations* (Washington: Smithsonian, 1988), p. 290.

<sup>10</sup>The Board of Commissioners was created by the April 10, 1869, act (16 Stat. 40).

<sup>11</sup>Fletcher, *Indian Education and Civilization*, p. 167.

<sup>12</sup>An Act Making Appropriations for the Current and Contingent Expenses of the Indian Department . . . , Act of July 15, 1870, Chap. 296, 41st Cong., 2nd sess., 16 Stat. 335, 359. See also U.S. American Indian Policy Review Commission, Task Force Five: Indian Education, *Report on Indian Education*, Committee Print (Washington: GPO, 1976), p. 69.

<sup>13</sup>Paul Stuart, *Nations Within a Nation: Historical Statistics of American Indians* (New York: Greenwood Press, 1987), pp. 135, 165.

Indian Industrial School (established in 1879).<sup>14</sup> Many Indian children attended on- or off-reservation boarding schools.<sup>15</sup> BIA schools were chiefly elementary and vocational schools.<sup>16</sup>

An organizational structure for BIA education began with a Medical and Education Division during 1873–1881, appointment of a superintendent of education in 1883, and creation of an education division in 1884.<sup>17</sup> The education of Alaska Native children, however, along with that of other Alaskan children, was assigned in 1885 to Interior’s Office of Education, not the BIA.<sup>18</sup> Mission, tribal,<sup>19</sup> and New York state schools continued to operate, and the proportion of school-age Indian children attending a BIA, mission, tribal, or New York school rose slowly.<sup>20</sup>

A major long-term shift in federal Indian education policy, from federal schools to public schools, began in FY1890–91 when the Commissioner of Indian Affairs, using his general authority in Indian affairs, contracted with a few local public school districts to educate nearby Indian children for whose schooling the BIA was responsible.<sup>21</sup> After 1910, the BIA pushed to move Indian children to nearby public schools and to close BIA schools.<sup>22</sup> Congress provided minimal appropriations to pay public schools for Indian students.<sup>23</sup> By 1920, more Indian students were in public schools than BIA schools.<sup>24</sup>

In 1921, Congress passed the Snyder Act<sup>25</sup> in order to authorize all programs the BIA was then carrying out. However, most BIA programs at the time, including education, lacked authorizing legislation. The Snyder Act continues to provide broad and permanent authorization for federal Indian programs.

In 1934, Congress enacted the Johnson O’Malley Act<sup>26</sup> (JOM) which authorized the BIA to contract with states for Native education. The JOM program is designed to meet the specialized educational needs of Native students. JOM funds are used to supplement other educational programs, and can be used for tutoring, books, supplies, Native language classes, cultural activities, after-

<sup>14</sup>Founded by Army Captain Richard H. Pratt on an unused Army base in Carlisle, PA, the school’s model of educating Indian students in an off-reservation manual labor boarding school, away from students’ families and cultures, became well-known. Pratt, its first superintendent, publicized the school and its emphasis on assimilation. Carlisle was funded through Indian appropriations bills and private donations. It closed in 1918. See Szasz and Ryan, “American Indian Education,” pp. 290–291.

<sup>15</sup>Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), pp. 815–816.

<sup>16</sup>Szasz and Ryan, “American Indian Education,” pp. 290–294.

<sup>17</sup>Edward E. Hill, comp., *Guide to Records in the National Archives of the United States Relating to American Indians* (Washington: National Archives and Records Service, 1981), p. 24. See also Szasz and Ryan, “American Indian Education,” pp. 290, 293.

<sup>18</sup>Hill, *Guide to Records*, p. 112; and Szasz and Ryan, “American Indian Education,” p. 297. Authorization for Alaska Native education was in §13, Act of May 17, 1884, Chap. 53, 48th Cong. 1st sess., 23 Stat. 24, 27–28.

<sup>19</sup>After 1870, most tribal schools were in Oklahoma, operated by one of the “Five Civilized Tribes” (Cherokee, Chickasaw, Choctaw, Creek, and Seminole), as they were then called.

<sup>20</sup>Szasz and Ryan, “American Indian Education,” p. 291.

<sup>21</sup>U.S. Department of the Interior, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs Fiscal Year 1890–1891* (Washington: GPO, 1891), p. 71.

<sup>22</sup>Prucha, *Great Father*, pp. 823–825.

<sup>23</sup>Prucha, *Great Father*, pp. 824–825.

<sup>24</sup>U.S. Department of the Interior, Bureau of Indian Affairs, *Report on BIA Education: Excellence in Indian Education Through the Effective Schools Process*. Final Review Draft (Washington: The Department, 1988), Table 1, p. 15.

<sup>25</sup>Act of November 2, 1921, 42 Stat. 208, as amended; 25 U.S.C. § 13.

<sup>26</sup>25 U.S.C. § 452–457

school activities, and any other education-related activities for Native students.

In 1953, Congress enacted the Impact Aid Act<sup>27</sup> which was the first education funding provided by the Department of Education for Native students. This Act provided funding to school districts to help fund the education of children from federally-impacted areas. Federally-impacted areas include areas where the federal government owns property, such as Indian trust lands and military bases. Because most school districts are funded through the federal government and local property taxes, and taxes cannot be collected on federal lands, the Impact Aid Act compensates local school districts for the education of children who reside on federal lands. Impact Aid funding is now part of Title VIII of the Elementary and Secondary Act.

Additional funding from the Department of Education was authorized in the Elementary and Secondary Act of 1965 (ESEA)<sup>28</sup>. The ESEA provided a set-aside for BIA schools. The Indian Education Act of 1972<sup>29</sup> also established the Office of Indian Education within the Department of Education. This was the first office outside the Department of Interior established to oversee a federal Native education program.

The Indian Self-Determination and Education Assistance Act of 1975<sup>30</sup> enabled tribes to take over the operation through grants or contracts of their BIE schools and perform the functions that the BIA had performed. Today, 124, or two-thirds of the 184 BIE schools, are grant schools.

The ESEA remains the primary source of federal aid for K-12 education. The most recent amendment and reauthorization of the ESEA, was the No Child Left Behind Act (NCLB) of 2001.<sup>31</sup> The NCLB added Title VII to the ESEA, which provides a wide range of provisions specifically for Native education.

NCLB was also a major expansion of federal influence over K-12 education. The NCLB relied on measures of accountability for public school systems and each individual student. States were required to implement standards-based assessments in reading, math and science which were measured in an annual yearly progress (AYP) for each school and school district. The goal was for all public schools to reach an AYP of proficient or higher by the end of the 2013–14 school year. If schools did not meet AYP for two consecutive years or more, accountability steps were put in place including school improvement, corrective action and school restructuring. As of the 2008 school year, 29% of public schools were failing to make AYP.

The BIE school system is also subject to NCLB. The Secretary of the Interior was charged with defining AYP for BIE schools. The Secretary conducted a negotiated rulemaking and it was determined that each BIE school's AYP would be defined by the state in which the school is located.

In anticipation of the reauthorization of the ESEA, Indian tribes, Native groups, and intertribal organizations have been commu-

<sup>27</sup> 20 U.S.C. § 7701 et seq.

<sup>28</sup> Pub. L. No. 89–10 (1965).

<sup>29</sup> 20 U.S.C. §§ 7401–7402.

<sup>30</sup> Pub. L. No. 93–638 (1975).

<sup>31</sup> Pub. L. No. 107–110 (2002).

nicating to the Committee their various concerns for the future of Native education.

#### NEED FOR LEGISLATION

In the ESEA, the federal government firmly stated its interest in and dedication to the education of Native peoples, stating, “it is the policy of the United States to fulfill the federal government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children.”<sup>32</sup> Despite that firm affirmation and the centuries-old tradition of attempting to ensure the education of Native children, there remain significant achievement gaps in educational outcomes for Native students in both BIE and public schools when compared to non-Native students. Major reports by the federal government on Native education issued in 1928,<sup>33</sup> 1969<sup>34</sup> and 1991<sup>35</sup> have demonstrated relatively little improvement in the education of Native peoples in 80 years—especially as it concerns retaining tribal cultures and identities through adequate language instruction.<sup>36</sup>

The federal government currently provides education funding and services to Native students through the Departments of Interior and Education. The Department of the Interior delivers services or support in two primary ways, through federally funded Bureau of Indian Education (BIE) schools or through education assistance via funding to public schools attended by Native students through the Johnson O’Malley Act.

Currently 620,000, or 93%, of Native students attend public schools and approximately 45,000, or 7%, attend BIE schools.<sup>37</sup> There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states.<sup>38</sup> More than 70 percent of those schools and students are located in four states: New Mexico, Arizona, North Dakota and South Dakota.<sup>39</sup> Public schools receive funding for Native students through the Department of Education, and BIE schools receive funding both through the Department of Interior’s budget and through Department of Education programs that serve Native students.

Native education associations provide, and the Committee notes that ESEA and other programs aimed at educating Native students are not yielding the desired outcomes and must be altered to address this reality. The national graduation rate for Native students is the lowest of any racial or ethnic group. Only 49.3% of Native students graduate high school, compared to 76.2% for their Cauca-

<sup>32</sup> 20 U.S.C. § 7401. Title 25 of the U.S. Code also refers to “the federal responsibility for and assistance to education of Indian children. 25 U.S.C. § 450(b)(2).

<sup>33</sup> L. Meriam, Institute for Government Research, *The Problem of Indian Administration* (1928).

<sup>34</sup> U.S. Senate Special Subcommittee on Indian Education, Committee on Labor and Public Welfare, *Indian Education: a National Tragedy, a National Challenge* (“Kennedy Report”), 1969, <http://www.tedna.org/pubs/Kennedy/toc.htm>, accessed 18 June 2011.

<sup>35</sup> U.S. Department of Education, *Indian Nations at Risk: An Educational Strategy for Action—Final Report of the Indian Nations at Risk Task Force*, 1991 available at <http://www.tedna.org/pubs/nationsatrisk.pdf> (last visited Dec. 15, 2011).

<sup>36</sup> See *Id.* at 31–33.

<sup>37</sup> National Indian Education Association, *Native Education 101: Basic Facts about American Indian, Alaska Native, and Native Hawaiian Education*, Available at <http://www.niea.org/data/files/policy/nativeeducation101.pdf> (last visited Dec. 15, 2011).

<sup>38</sup> *Id.* at 3.

<sup>39</sup> Bureau of Indian Education National Directory, June 2011, available at <http://www.bie.edu/idc/groups/xbie/documents/text/idc014129.pdf> (last visited Dec. 15, 2011).

sian counterparts.<sup>40</sup> Among those who graduate only 13.3% go on to receive a college degree compared with a national average of 24.4%.<sup>41</sup> According to the BIE, 25% of BIE schools made AYP in SY2007–2008, and 33% made AYP in SY2008–2009.<sup>42</sup> In SY2008–2009, 66% of all public schools made AYP.<sup>43</sup> Further, according to Tribal Education Departments National Assembly (TEDNA), the high school dropout rate of tribal students is 50%—nearly double that of their Caucasian peers; tribal students have the highest rates of absenteeism, suspension, and expulsion; and tribal 8th grade students are 18% more likely to read or perform in mathematics at a “below basic” level than their Caucasian peers.<sup>44</sup>

Proffered reasons for the achievement gap center around severe underfunding of federal programs; the inability of tribes to attract and retain quality teachers to teach on or near reservations; a fractured administration between the Department of the Interior and the Department of Education in implementing programs; and a lack of cultural relevance in curriculum, operational philosophy, and language instruction. With regard to NCLB, common tribal concerns received by the Committee are that the Act had a disproportionately negative impact on high-poverty schools such as many schools serving Native students, teaching and enforcement processes under the Act were too rigid and did not allow flexibility in teaching, and that the Act lacked a mechanism to attract highly-qualified teachers to underperforming schools and that its standards were unrealistic.

In developing S. 1262 with an aim at addressing tribal concerns and affecting more positive educational outcomes for Native students, the Committee received views from a broad range of Native stakeholders to develop ideas for improving the status of Native education. During the 112th Congress, the Committee held a roundtable discussion on Native education, an oversight hearing on language and culture-based education, and met with tribal leaders, as well as national and regional intertribal organizations. Recommendations from these stakeholders fell into three distinct themes: (1) language and culture-based education; (2) teacher training, recruitment, and retention; and (3) tribal access and local control.

Native education organizations and tribal leaders have repeatedly called for greater involvement in the education of their students, especially those in public schools. S. 1262 would encourage increased consultation and coordination between tribes, Native students and parents, and/or tribal organizations by requiring the Department of Education, DOI, states, and local education agencies (LEAs) to increase or begin consulting or coordinating with them. Further, S. 1262 would require that states develop standards-based

<sup>40</sup> National Indian Education Association, Native Education 101: Basic Facts about American Indian, Alaska Native, and Native Hawaiian Education, Available at <http://www.niea.org/data/files/policy/nativeeducation101.pdf> (last visited Dec. 15, 2011).

<sup>41</sup> National Indian Education Association, National Native Education Agenda, A Transition Paper for the Department of Education, 2008 available at <http://www.niea.org/data/files/policy/2008transitionpaperdoe.pdf> (last visited Dec. 15, 2011).

<sup>42</sup> FY2012 Budget, p. 1A–EDU–10.

<sup>43</sup> U.S. Department of Education, Justifications of Appropriation Estimates to the Congress, Fiscal Year 2012.

<sup>44</sup> Tribal Education Departments National Assembly, The Elementary and Secondary Education Act Reauthorization Recommendations for Tribal Education Departments/Agencies, Boulder, CO, (cont'd) February 11, 2011, [http://www.tedna.org/articles/esea\\_reauthorization\\_recommendations.pdf](http://www.tedna.org/articles/esea_reauthorization_recommendations.pdf) (last accessed 11/4/12).

assessments and classroom lessons to accommodate diverse learning styles. The Committee notes that leaders in the field of Native education believe a major problem leading to achievement gaps is that traditional Eurocentric educational styles are not conducive to teaching Native students. The bill would promote language preservation by permitting tribal elders to teach Native languages through provisions aimed at qualifying them as highly qualified teachers for the purposes of teaching Native language and culture. S. 1262 would also authorize set-asides and other funding mechanisms to attract teachers to underperforming schools and moreover to ensure the adequate funding of Native education programs.

#### LEGISLATIVE HISTORY

S. 1262, the Native Culture, Language, and Access for Success in Schools Act, was introduced on June 23, 2011, by Senator Akaka, and is co-sponsored by Senators Inouye of Hawaii, Johnson of South Dakota, and Udall of New Mexico. Two similar bills—H.R. 3568 and H.R. 3569—were introduced in the House of Representatives on December 6, 2011. The former by Representative Dale Kildee of Michigan’s 5th District and the latter by Representative Joe Baca of California’s 43rd District. The Senate Committee on Indian Affairs held a legislative hearing on S. 1262 on June 30, 2011 and a business meeting to consider the bill on October 20, 2011.

During the business meeting on October 20, 2011, the bill was reported favorably with an amendment in the nature of a substitute, a technical amendment and one other amendment to the full Senate.

#### SUMMARY OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The substitute amendment removes from the original bill narrow exemptions for tribal schools and educators from standards for high-quality teachers and state assessments, essentially leaving intact the current framework in the education law commonly known as No Child Left Behind.

Specifically, the exemptions would have allowed states to develop standards-based assessments to accommodate diverse learning styles in place of general assessments under the law. They also would have applied to Native language teachers.

It would exempt most tribal colleges and universities from certain eligibility applications to receive financial assistance. It also would create an Indian language and training program to award competitive grants to eligible institutions to promote the preservation, revitalization and use of Indian languages.

The substitute amendment also establishes “Centers for Innovation in Tribally Directed Education,” which would provide technical and professional expertise to Indian tribes to help them grow and maintain the capacity to deliver education services to Indian children. Grants would be awarded to entities to help establish the centers.

Lastly, the substitute would also create educational and culture programs specifically geared toward Native Hawaiians, including grants for a Native Hawaiian education council.

## SECTION-BY-SECTION ANALYSIS OF THE BILL, AS AMENDED

*Section 1. Short title; table of contents*

This section provides that the short title of the bill is the “Native Culture, Language, and Access for Success in Schools Act” and lays out a table of contents.

## TITLE I—ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

This title generally makes amendments to the Elementary and Secondary Education Act of 1965.

## SUBTITLE A—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

*Section 111. Improving the education of students*

This section makes various amendments to Part A of title I of the Elementary and Secondary Education Act (ESEA) of 1965 (20 U.S.C. 6301 et seq.) including provisions regarding standards-based education assessments, Native American languages, and the Indian School Turn Around Program.

*Section 112. Prevention and intervention programs for children and youth who are neglected, delinquent, or at-risk*

This section makes various amendments to Part D of title I of the Elementary and Secondary Education Act (ESEA) of 1965 (20 U.S.C. 6301 et seq.) including provisions regarding Tribal consultation, grants to Indian Tribes, and technical assistance.

*Section 113. State Administration*

This section amends Section 1903(b)(2) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 6573(b)(2)).

## SUBTITLE B—PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS AND PRINCIPALS

*Section 121. Preparing, training, and recruiting high-quality teachers and principals*

This section amends Title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.) including provisions regarding high need local education agencies and the Indian educator scholarship program.

## SUBTITLE C—NATIVE AMERICAN LANGUAGES PROGRAMS

*Section 131. Improvement of academic success of Indian students through Native American languages and programs*

This section amends Subpart 1 of part A of title III of the Elementary and Secondary Education Act (20 U.S.C. 6821 et seq.) to provide for Native American languages programs, grants for such programs, and authorizes appropriations.

*Section 132. State and tribal educational agency agreements*

This section amends Part A of title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6801 et seq.) adding a section thereto dealing with state and tribal education agency agreements.



## SUBTITLE D—21ST CENTURY SCHOOLS

*Section 141. Safe and healthy schools for Native American students*

This section amends subpart 2 of part A of title IV of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7131 et seq.) providing for the establishment of a program to improve the school environments and student skill development for healthy choices for Native American students in all public elementary and secondary schools that are eligible to receive support under part A of title VII of the ESEA.

## SUBTITLE E—CENTERS FOR INNOVATION IN TRIBALLY DIRECTED EDUCATION

*Section 151. Centers for innovation in tribally directed education*

This section amends Part A of title V of the Elementary and Secondary Education Act (20 U.S.C. 7201 et seq.) to deal with centers for innovation in tribally directed education and grants and guidelines for such grants to such centers.

*Section 152. Authorization of appropriations*

This section amends Section 5156 of the Elementary and Secondary Education Act (20 U.S.C. 7121e) to authorize appropriations for those grants discussed in Section 151.

## SUBTITLE F—INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION

## PART I—INDIAN EDUCATION

*Section 161. Purpose*

This section amends section 7102 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7402) by adding a new “purpose” section to that statute.

*Section 162. Purpose of formula grants*

This section amends section 7111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7421) to revise its purpose statement.

*Section 163. Grants to local educational agencies and tribes*

This section amends section 7112 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7422) including provisions regarding grants to consortia of two or more local educational agencies.

*Section 164. Amount of grants*

This section amends section 7113 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7423) addressing the amount of grants.

*Section 165. Applications*

This section amends section 7114 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7424) including provisions regarding outreach to local education agencies.

*Section 166. Authorized services and activities*

This section amends section 7115 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7425) including provisions regarding Native American language programs and Native American language restoration programs.

*Section 167. Student eligibility forms*

This section amends section 7117(e) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7427(e)) including a provision regarding record keeping by local educational agencies.

*Section 168. Technical assistance*

This section amends subpart 1 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7421 et seq.) to address technical assistance to Indian tribes and local educational agencies.

*Section 169. Amendments relating to tribal colleges and universities*

This section amends subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7441 et seq.) to address funding to tribal colleges and universities.

*Section 170. Tribal educational agency cooperative agreements*

This section amends subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7441 et seq.) to address cooperative agreements between tribal education agencies and their state and local education agencies.

*Section 171. Tribal educational agencies pilot project*

This section amends subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7441 et seq.) to establish and set out provisions for a tribal educational agency pilot project.

*Section 172. Improving support for teachers and administrators of Native American students*

This section amends subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7441 et seq.) to authorize grants to eligible entities to enable such entities to expand or develop programs aimed at teacher and administrator preparation and recruitment.

*Section 173. National board certification incentive demonstration program*

This section amends subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7441 et seq.) to establish a national board certification incentive demonstration program.

*Section 174. Tribal language immersion schools*

This section amends subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7441 et seq.) to authorize grants to enable the development of tribal language immersion schools.

*Section 175. Coordination of Indian student information*

This section amends subpart 3 of part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7451 et seq.) to address the coordination of Indian student information including provisions regarding the award of grants, data elements, and a report to Congress on the status of implementation of this section.

*Section 176. Authorization of appropriations*

This section authorizes appropriations for carrying out subparts 1, 2 and 3.

## PART II—NATIVE HAWAIIAN EDUCATION

*Section 177. Findings*

This section amends section 7202 of the Elementary and Secondary Education Act (20 U.S.C. 7511 et seq.) by laying out findings associated with this part of the legislation.

*Section 178. Purposes*

This section amends section 7203 of the Elementary and Secondary Education Act (20 U.S.C. 7513) to lay out purposes of this part of the legislation.

*Section 179. Native Hawaiian Education Council Grant*

This section amends section 7204 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7514) regarding the authorization of a grant for the Native Hawaiian Education Council.

*Section 180. Grant program authorized*

This section amends section 7205 of the Elementary and Secondary Education Act (20 U.S.C. 7515 et seq.).

*Section 181. Administrative provisions; authorization of appropriations*

This section amends section 7206 of the Elementary and Secondary Education Act (20 U.S.C. 7516) with regard to administrative provisions and the authorization of appropriations.

*Section 182. Definitions*

This section amends section 7207 (20 U.S.C. 7517) with regard to certain definitions.

## SUBTITLE G—IMPACT AID

*Section 185. Impact Aid*

This section amends section 8004 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7704).

## SUBTITLE H—GENERAL PROVISIONS

*Section 191. Highly qualified definition*

This section amends section 9209(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(23)) with regard to the definition of “highly qualified.”

*Section 192. Applicability of ESEA to Bureau of Indian Education schools.*

This section amends section 9103 of the Elementary and Secondary Education Act (20 U.S.C. 7821) regarding the applicability of such act to Bureau of Indian Education Schools.

*Section 193. Increased access to resources for tribal schools, schools served by the Bureau of Indian Education, and Native American students*

This section amends subpart 2 of part E of title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7901 et seq.) with regard to technical assistance and capacity building.

Title II—Amendments to Other Laws

*Section 201. Amendments to the American Recovery and Reinvestment Act of 2009 to provide funding for Indian programs*

This section amends the American Recovery and Reinvestment Act of 2009 to provide funding for Indian programs such as Bureau of Indian Education schools.

*Section 202. Qualified scholarships for education and cultural benefits.*

This section amends section 1117 of the Internal Revenue Code of 1986 with respect to income and qualified Indian education benefits and qualified Indian cultural benefits.

*Section 203. Tribal Education Policy Advisory Group*

This section amends section 1126 of the Education Amendments of 1978 (25 U.S.C. 2006) to establish a tribal education policy advisory group.

*Section 204. Division of budget analysis*

This section amends section 1129 of the Education Amendments of 1978 (25 U.S.C. 2009) with regard to funding associated with Bureau of Indian Education schools.

*Section 205. Tribal education agencies*

This section makes various amendments to section 1140 of the Education Amendments of 1978 (25 U.S.C. 2020).

*Section 206. Qualified school construction bond escrow account*

This section amends part B of title II of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458) regarding the establishment of a qualified school construction bond escrow account.

*Section 207. Equity in Educational Land-Grant Status Act of 1994*

This section makes various amendments to section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

*Section 208. Workforce Investment Act of 1998*

This section makes various amendments to Title II of the Workforce Investment Act of 1998 (20 U.S.C. 9201 et seq.) including the

establishment of an American Indian, Native Hawaiian, and Tribal College or University Adult Education and Literacy Grant Program.

*Section 209. Technical amendments to Tribally Controlled Schools Act of 1988*

This section makes technical amendments to certain sections of the Tribally Controlled Schools Act of 1988.

*Section 210. Exemption from eligibility application*

This section makes amendments to paragraph (1) of section 316(d) of the Higher Education Act of 1965 (20 U.S.C. 1059c(d)).

*Section 211. Tribal colleges and universities American Indian language vitalization and training program*

This section amends part A of title III of the Higher Education Act of 1965 (20 U.S.C. 1057 et seq.) by adding at the end a section dealing with the authorization of an American Indian Language Vitalization and Training Program.

*Section 212. Administrative cost grants for tribally operated schools*

This section makes amendments to section 1128(1)(1) of the Education Amendments of 1978 (25 U.S.C. 2008(l)(1)).

*Section 213. Tribal member student records*

This section amends section 444(b)(1)(C) of the General Education Provisions Act (20 U.S.C. 1232g(b)(1)(C)).

Title III—Additional Education Provisions

*Section 301. Native American student support*

This section addresses program expansion within the Department of Education for research and support associated with culture and language-based education and Native American school children.

*Section 302. Ensuring the survival and continuing vitality of Native American languages*

This section provides for a grant program aimed at ensuring the survival of Native American languages.

*Section 303. In-school facility innovation program contest*

This section provides for a contest involving improvements to tribal school facilities administered by the Secretary of the Interior.

*Section 304. Retrocession or reassumption of certain school funds*

This section discusses what is to happen with certain funds when Public Law 100–297 grantees or Public Law 93–638 contract schools retrocede authority to, or such authority is reassumed by, the Bureau of Indian Education.

*Section 305. Department of the Interior and Department of Education Joint Oversight Board*

This section provides for the establishment of a Department of the Interior and Department of Education Joint Oversight Board of Native American education.

*Section 306. Tribal self-governance feasibility study*

This section provides for the conducting of a study to determine the feasibility of entering into self-governance compacts and contract with Indian tribal governments who wish to operate public schools that reside within their lands. This section also provides for the considerations the Secretary of Education must consider when conducting such study and its report to Congress.

*Section 307. Establishment of Center for Indigenous Excellence*

This section calls for the establishment, and describes the role of, a prospective Center for Indigenous Excellence.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business meeting on October 20, 2011, the Committee on Indian Affairs, by voice vote, adopted S. 1262 with an amendment in the nature of a substitute, a technical amendment and one other amendment, and ordered the bill reported to the Senate, with the recommendation that the Senate do pass S. 1262 as reported.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available for inclusion in this report. The estimate will be printed in either a supplemental report or the Congressional Record when it is available.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that 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 the regulatory impact of S. 1262 will be minimal.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1262.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.