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A BILL TO AMEND THE NATIVE AMERICAN PROGRAMS ACT OF 1974 TO PROVIDE FLEXIBILITY AND REAUTHORIZATION TO ENSURE THE SURVIVAL AND CONTINUING VITALITY OF NATIVE AMERICAN LANGUAGES

APRIL 4, 2017.—Ordered to be printed

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

REPORT

[To accompany S. 254]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 254) to amend the Native American Programs Act of 1974 to provide flexibility and reauthorization to ensure the survival and continuing vitality of Native American languages, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of S. 254 is to provide additional flexibility for and reauthorization of the *Esther Martinez Native Languages Preservation Act*, Public Law No. 109–394, a grant program that is administered by the Administration for Native Americans (ANA) in the U.S. Department of Health and Human Services.

BACKGROUND AND HISTORY

History of key federal laws supporting Native American languages

In 1990, Congress passed the *Native American Languages Act* (NALA). This law recognizes the unique status of Native American cultures and languages. According to the law, it is federal policy to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages."[1] Further, NALA declares federal support for "the use of

[1] Native American Languages Act of 1990 [NALA], Pub. L. No. 101–477, 25 U.S.C. §§ 2901–2906 (1990).

Native American languages as a medium of instruction."[2] Congress recognized a number of reasons for encouraging instruction in Native languages, including language survival, community pride, improved educational opportunity, and increased student achievement.

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

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

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

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

At an oversight hearing on May 13, 2015, the Bureau of Indian Education's witness highlighted the importance the agency, which is specifically tasked with American Indian and Alaska education, places on working with tribes to implement Native language programs that lead to fluency.[3] At a legislative hearing on April 6, 2016, witnesses representing tribal governments, state governments, and nonprofit organizations each spoke on the importance of Native language preservation and continuation.[4]

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[2] Esther Martinez Native American Languages Preservation Act of 2006, Pub. L. No. 109–394, 42 U.S.C. § 2991b–3.

[3] *Bureau of Indian Education: Examining Organizational Challenges in Transforming Educational Opportunities for Indian Children Before the S. Comm. on Indian Affairs,* 114 Cong. 43 (2015) (statement of Bureau of Indian Education witness).

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

Preservation and maintenance and the Esther Martinez Initiative Grant Program

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

The Department of Health and Human Services (HHS), through the Administration for Native Americans (ANA), administers grant funding under the *Native American Programs Act of 1974*. Language maintenance grant funding provides opportunities for grantees to assess, plan, develop, and implement projects to ensure the survival and continuing vitality of Native languages. The ANA has also formed a Native Languages Workgroup to ensure the program is meeting ANA goals and providing technical assistance to grantees and potential grantees.

In FY 2016, the ANA awarded a total of $12,370,802.72 of grant funding for Native American language grants to 166 programs. Of that funding, EMI grantees received $3,141,298 and P&M grantees received $9,229,504.72. In FY 2015, the ANA awarded a total of $13,064,963 of grant funding for Native American language grants to sixty-one different programs across Indian Country, of which $5,127,715 went to EMI projects and $7,937,248 went to P&M grants.

According to the "2012 Impact and Effectiveness of ANA Projects Report to Congress",[5] the ANA evaluated 22 out of the 63 total language grantees' projects from across Indian Country. The 2012 impact data showed that from these 22 projects a total of 178 language teachers were trained in teaching Native languages; 2,340 youth had increased their ability to speak a Native language or achieved fluency; and 2,586 adults had increased their ability to speak a Native language or achieved fluency.

The 2014 Impact and Effectiveness report documented that the ANA had evaluated 61 language grantees from across Indian Country, approximately one third of all language projects funded.[6] The 2014 impact data showed that from these 61 projects a total of 285 language teachers were trained in teaching Native languages; 4,582 youth had increased their ability to speak a Native language; 91 youth had achieved fluency; and 3,334 adults had increased their ability to speak a Native language or achieved fluency.

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[5] Administration for Children and Families, Department of Health and Human Services, 2012 Impact and Effectiveness of Administration for Native American Projects: Report to Congress (2012).

[6] Administration for Children and Families, Department of Health and Human Services, 2014 Impact and Effectiveness of Administration for Native American Projects: Report to Congress (2014).

Improvements to the current grant program

Duration of grants

During Committee legislative hearings held on June 18, 2014, and November 18, 2015, the ANA stated that grantee interviews suggest that the duration of language grants from the current three-year time frame should be increased to up to a five-year basis.[7] Commissioner Sparks further testified that, by expanding its authority to increase the duration of awards, projects will become more sustainable and yield increased results.[8] The P&M grants are currently awarded on a one-, two-, and three-year basis and EMI grants are awarded on a three-year basis. The bill, S. 254, reflects the feedback provided by grantees to the ANA and amends Section 803C(e)(2) of the *Native American Program Act of 1974* to extend these Native language grants to up to a five-year basis.

According to the 2014 testimony provided by Commissioner Sparks, the ANA completed a preliminary analysis of the effects that this change would have on the number of grant awards made each year.[9] Commissioner Sparks stated that she did not anticipate a significant decrease in total number of grants active each year but also noted that funding will shift from new project awards to awards for continuing projects as a result of this change.

Commissioner Sparks additionally testified that the ANA awarded an average of 16 new P&M grants each year for a total active grantee pool of 40 any given time.[10] For EMI grants, ANA awarded an average of six new grants per year for a total active grantee pool of approximately 18 at any given time. Commissioner Sparks estimated that new P&M grant awards would decrease by approximately five projects per grant award cycle and new EMI grant awards would decrease by an estimated two to three projects per grant award cycle.

Commissioner Sparks further reported that an analysis of the effects of the grant period length on the project revealed that as the duration of the project increased, the impact of the project significantly increased.[11] Therefore, Commissioner Sparks stated the ANA believes increasing the duration of years will increase the number of individuals achieving fluency, the number of teachers trained, and the chances of a project's sustainability. Commissioner Sparks also stated that extending the length of the grants would allow grantees more time to find supplemental funding to support their program once the grant awards expire.

Language nests and survival school student minimums

During the November 18, 2015, Committee hearing, Commissioner Sparks stated that grantees have requested that the criteria

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

[8] *Id.*

[9] *Legislative Hearing on S. 1948 and S. 2299 Before the S. Comm. on Indian Affairs,* 113 Cong. 14 (2014) (statement of Lillian Sparks, Commissioner, Administration for Native Americans).

[10] *Legislative Hearing on S. 1948 and S. 2299 Before the S. Comm. on Indian Affairs,* 113 Cong. 9–11 (2014) (statement of Lillian Sparks, Commissioner, Administration for Native Americans).

[11] *Id.*

for student minimums be lowered.[12] By lowering the requirement for language nests from 10 to 5 students and for survival schools from 15 to 10 students, Commissioner Sparks testified that more projects would be eligible in lower-populated and remote areas. This bill would amend Section 803C(b)(7) of the *Native American Program Act of 1974* to lower the requirement for the minimum number of children in language nests from 10 to 5 children and lower requirement for the minimum number of children in survival schools from 15 to 10 children.

LEGISLATIVE HISTORY

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

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

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

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

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

On July 30, 2014, the Committee met at a duly called business meeting to consider the bill. Senator Johnson of South Dakota offered two amendments, which were both adopted. The first amend-

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

ment, in the nature of a substitute, altered Sec. 803C(e)(2) of the Native American Program Act of 1974 to permit grants a life of three, four or five years and would eliminate the three-year requirement and Sec. 803C(b)(7) of the Native American Program Act of 1974 to lower the minimum number of children in language nests from 10 to 5 children and lower the minimum number of children in survival schools from 15 to 10 children. As amendments to the title must be done separately from a substitute amendment, the second amendment simply updated the title of the bill to reflect the changes made by the first amendment. The bill, as amended, was ordered to be favorably reported to the Senate by voice vote.

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

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1. Short title

Section 1 sets forth the short title of the bill as the "Esther Martinez Native American Languages Preservation Act."

Section 2. Native American languages grant program

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

Section 3. Reauthorization of the Native American languages program

Section 3 reauthorizes Section 816(e) of the Native American Programs Act of 1974 (42 U.S.C. 2992d(e)) from 2017 to 2022.

COST AND BUDGETARY CONSIDERATIONS

MARCH 7, 2017.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 254, the Esther Martinez Native American Languages Preservation Act.

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

Sincerely,

KEITH HALL.

Enclosure.

Summary: S. 254 would authorize, through 2022, a grant program to preserve Native American languages. CBO estimates that

implementing the legislation would cost $53 million over the 2017–2022 period, assuming appropriation of the necessary amounts.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 254 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 254 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

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 S. 254 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 254.

CHANGES IN EXISTING LAW

On February 8, 2017, the Committee unanimously approved a motion by Chairman Hoeven to waive the Cordon rule. Thus, in the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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