

# Committee on Natural Resources

Rob Bishop Chairman  
Mark-Up Memorandum

July 11, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff,  
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: S. 246 (Sen. Heidi Heitkamp, D-ND), To establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes.  
**July 12-13, 2016; 1324 Longworth HOB**

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## *S. 246, "Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act"*

### **Summary of the Bill**

S. 246 would establish, within the U.S. Department of Justice's Office of Tribal Justice, an 11-member Commission on Native Children to conduct a comprehensive study regarding the federal and local programs, grants, and support available for Native communities and Native children. Under this bill, Native children are broadly defined to include children who are members of recognized Indian tribes or Alaska Native Villages, and children who are Native Hawaiian.

The Commission would include experts in areas of Indian affairs including juvenile justice, social work, education, and mental and physical health, all of whom would be appointed by the President and House and Senate leaders. Three years after the date on which the Commission is fully appointed and fully funded, the Commission must issue a report with its recommendations on how to: improve use of existing federal resources; increase coordination among federal agencies; obtain measurable outcomes; strengthen the quality of data; enhance private sector partnerships; implement best practices.

A House companion, H.R. 2571, is sponsored by Rep. Betty McCollum (D-MN). Cosponsors include Reps. Cole (R-OK), Denham (R-CA), Ruiz (R-CA), and Takai (D-HI).

### **Cosponsors**

Baldwin (D-WI), Blumenthal (D-CT), Boxer (D-CA), Cantwell (D-WA), Collins (R-ME), Daines (R-MT) Feinstein (D-CA), Fischer (R-NE), Franken (D-MN), Heinrich (D-NM), Hirono (D-HI), Hoeven (R-ND), Inhofe (R-OK), Klobuchar (D-MN), Moran (R-KS), Murkowski (R-AK), Murray (D-WA), Peters (D-MI), Schatz (D-HI), Shaheen (D-NH), Stabenow (D-MI), Tester (D-MT), Thune (R-SD), Udall (D-NM), Warren (D-MA), Whitehouse (D-RI).

## **Background**

Native people are generally considered to be the most at-risk population in the country, facing significant disparities in mortality, health, education, and safety, relative to the non-Native population.<sup>1</sup> These risks begin as soon as Native children are born and continue through adolescence. The Substance Abuse and Mental Health Services Administration reports that suicide is the second leading cause of death—2.5 times the national rate—for Indian youth in the 15 to 24 age group. Indian tribal governments, many of which are in impoverished communities, face numerous obstacles in responding to the needs of Native children. Federal agencies lack clear implementation plans, training and technical assistance for tribes and Native villages.

Advocates of the bill assert that the collection, development, and evaluation of appropriate data is fundamental to a comprehensive assessment of the needs of Native children who may be rendered even more vulnerable by the misplaced or chronic underfunding of programs for Indian Country due to the lack of data.<sup>2</sup>

The purpose of S. 246, as described in S. Rept. 114-39 (Senate Committee on Indian Affairs Report to accompany the bill), is to establish a Commission whose goal is to develop recommendations and a report on necessary changes and improvements to Federal, state, and tribal programs to benefit Native children.<sup>3</sup> The scope of the Commission’s analysis and report would be broad, including programs, services, and benefits related to child welfare, mental and physical health, and education systems. The report would supplement the efforts of other commissions and task forces such as the Attorney General’s Task Force on American Indian/Alaska Native Children Exposed to Violence.<sup>4</sup>

## **Section-by-Section Analysis of S. 246**

*Sec. 1. Short Title.* Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act.

*Sec. 2. Findings.* This section sets forth a number of findings, including that the federal government has a trust responsibility to provide for the education, health, and safety of Native children, and that Native children are the most at-risk population in the country facing significant disparities with their peers.

*Sec. 3. Definitions.* Provides definitions used under the Act. “Native child” is defined to include an Indian between the ages of 18 and 24 years old, and a Native Hawaiian who is not older than 24 years old. Native Hawaiian is given the meaning of such term in section 7207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517).<sup>5</sup>

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<sup>1</sup> <https://www.ihs.gov/newsroom/factsheets/disparities/>

<sup>2</sup> S. Rept. 114-39, to accompany S. 246, p. 3.

<sup>3</sup> *Ibid.*

<sup>4</sup> <https://www.justice.gov/defendingchildhood/task-force-american-indian-and-alaska-native-children-exposed-violence>

<sup>5</sup> 20 U.S.C. 7517(2) defines “Native Hawaiian” to mean any individual who is a U.S. citizen and a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by: genealogical records; Kupuna (elders) or Kamaaina (long-term community residents) verification; or certified birth records.

*Section. 4. Commission on Native Children.* Section 4 establishes the Alyce Spotted Bear and Walter Soboleff Commission on Native Children in the Office of Tribal Justice of the Department of Justice.

*Subsection (b). Membership.* Requires the President and Congress to appoint members to the Commission who have significant experience and expertise in Indian affairs, including health care issues facing Native children, Indian education, juvenile justice programs, and social service programs used by Native children.

*Subsection (d). Native Advisory Committee.* Establishes a Native Advisory Committee consisting of representatives of Indian tribes from each region of the Bureau of Indian Affairs and a Native Hawaiian. All representatives must be 25 years of age or older. The Native Advisory Committee must a subcommittee consisting of Native children from each Bureau of Indian Affairs region of the country and Hawaii, and have experience serving on the council of a tribal, regional, or national youth organization.

*Subsection (e). Comprehensive Study of Native Children Issues.* Requires the Commission to conduct a comprehensive study of federal, state, local, and tribal programs that serve Native children, including an evaluation of:

- The impact of concurrent jurisdiction on child welfare systems;
- Barriers Indian tribes and Native Hawaiians face in using public and private grant resources;
- Obstacles to nongovernmental financial support for programs benefitting Native children;
- Issues relating to the validity and statistical significance of data on Native children;
- Barriers to the development of sustainable, multidisciplinary programs designed to assist high-risk Native children and their families;
- Cultural or socioeconomic challenges of Native children;
- Examples of successful programmatic models and use of best practices in programs that serve children and families;
- Barriers to interagency coordination; and
- Options for facilitating and improving agency coordination.

This subsection also directs the Commission to develop comprehensive recommendations to improve services to Native children, as specified in the test of the bill.

*Subsection (f). Report.* Requires the Commission to report to the President, Congress, and the White House Council on Native American Affairs on its findings, conclusions, and recommendations for legislative and administrative action.

*Subsection (g). Powers.* Provides that 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. Hearings and meetings shall be open to the public. The Commission may secure directly from a Federal agency such information as the Commission considers to be necessary, and may request such information as necessary from tribal and state agencies.

*Subsection (h). Personnel Matters.* Provides that members of the Commission shall be allowed travel expenses while away from the home. There is authorized the use of detail federal employees, without reimbursement, by an affirmative vote by 2/3 of the Commission members. At the Commission request, the Attorney General shall provide to the Commission, on a reimbursable basis, reasonable and appropriate office space, supplies, and administrative assistance.

*Subsection (i). Termination of Commission.* The Commission shall terminate within 90 days of submission of the report under subsection (f).

*Subsection (k).* Declares that this Act shall not be construed to recognize or establish a government-to-government relationship with any entity not recognized on or before date of enactment of the Act by the Federal Government, an Act of Congress, or judicial decree.

*Subsection (l). Funding.* Authorizes \$2 million in appropriations to carry out the Act.

### **Cost**

The Congressional Budget Office estimates S. 246 would cost \$2 million over the 2015-2020 period, subject to appropriation of the necessary amounts. Direct spending would be insignificant, and revenues are not affected.<sup>6</sup>

### **Administration Position**

At the Subcommittee on Indian, Insular and Alaska Native Affairs May 18, 2016 hearing on S. 246, the Department of the Interior testified in support of the bill. The Department of Justice declined to testify and no statement was received for the hearing record. No hearing was held in the Senate on S. 246 in the 114<sup>th</sup> Congress.

### **Anticipated Amendments**

Possible Bishop Amendment to delete or offset the \$2 million authorization of appropriations in the bill, in accordance with House Republican Protocols guiding the scheduling of legislation for Floor consideration (“Cut-Go for Discretionary Authorizations”).<sup>7</sup> The amendment would further strike the Congressional Findings section in the bill and add the House and Senate authorizing and appropriating committees the list of recipients of the Commission’s report.

### **Effect on Current Law (Ramseyer)**

None.

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<sup>6</sup> <https://www.cbo.gov/publication/49943>

<sup>7</sup> <http://www.majorityleader.gov/protocols/>