AMENDMENT
TO RULES COMMITTEE PRINT 115–70
OFFERED BY MR. KILMER OF WASHINGTON

At the end of subtitle G of title X, insert the following:

SEC. 10. DEPARTMENT OF DEFENSE TRIBAL MATTERS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Indian nations and tribes were independent sovereigns prior to the formation of the United States and through treaties, agreements, statutes and executive orders, Indian nations and tribes were offered the protection of the United States, guaranteed the sanctity of their homelands, and reserved their original inherent rights to tribal self-governance;

(2) treaties held by federally recognized Indian Tribes represent binding agreements between Indian tribal governments and the United States Government and honoring the commitments made under such treaties is a Federal responsibility and a national priority;
(3) the United States government is obligated to consult with Indian nations and tribes on a government-to-government basis whenever Federal activities have the potential to impact Tribal land and treaty protected tribal rights and resources, and to avoid or mitigate those impacts wherever practicable;

(4) when certain impacts to Tribal land and treaty protected tribal rights and resources cannot be effectively mitigated or compensated, it is in the best interest of the United States government to avoid these impacts, to the extent practicable;

(5) improving communication and cooperation between the Department of Defense, the military services, and federally recognized Indian Tribes is important with respect to the United States meeting its national security obligations and its trust responsibilities, and includes involving the appropriate level of decisionmakers in the process, and early Tribal involvement and engagement concerning the process before any action is taken; and

(6) ensuring that the Department of Defense is able to build, maintain, improve, and secure facilities supporting its mission is important to national security.
(b) **Review of Department of Defense Policies and Compliance.**—

(1) **Review.**—The Secretary shall conduct a review of—

(A) military service policies, and compliance with such policies, regarding conduct of government-to-government consultation between Indian Tribes with Tribal land and treaty protected tribal rights and resources;

(B) the extent to which such military service policies conform to the policies of the Department of Defense and the United States’ trust obligations toward Indian Tribes and the extent to which such policies can be improved or, where absent, developed;

(C) education programs for installation and regional commanders and other senior leaders of the military services regarding Indian Tribes, the government-to-government relationship and trust responsibility, Tribal culture and traditions, and treaty protected tribal rights and resources;

(D) best practices utilized by other agencies of the United States for government-to-government consultation with and carrying out the
(E) the capacity of regional commands and program offices to identify the effects of Department of Defense and military service policies and actions on Tribal land and treaty protected tribal rights and resources.

(2) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall, in coordination with affected tribes, submit to Congress a report that contains—

(A) the results of the review required under paragraph (1);

(B) an action plan for identifying gaps in the compliance with, improving, and, where necessary, further developing Department of Defense policies regarding government-to-government consultation with and the fulfillment of the United States’ trust obligations toward Indian Tribes;

(C) a list of best practices for the conduct of government-to-government consultation between the military services and Indian Tribes with Tribal land and treaty protected tribal rights and resources; and
(D) an assessment of the feasibility of various mechanisms to improve communication with tribal leaders including but not limited to the following: the granting of security clearances to qualified tribal liaisons as defined in section 499b(c); providing relevant information that is for official use only; providing information on potential projects earlier in the budget cycle; discussion of potential programs outside of the future years defense program; and any other tools for improving communication and cooperation between the Department of Defense, the military services, and federally recognized Indian Tribes; and

(E) an assessment of the feasibility of various mechanisms to improve the process by which compensation for mitigation is awarded to impacted tribes including but not limited to the following: opportunities for improved efficiency under existing Sikes Act authorities; alternative funding pathways that exist under other Department of Defense programs such as the Readiness and Environmental Protection Integration program; and the creation of a new
pathway expressly for distributing mitigation
funding awarded to federally recognized tribes.

(c) Department of Defense Treatment of Indian Tribes and of Tribal Land and Treaty Protected Tribal Rights and Resources Potentially Impacted by Department Projects.—

(1) In general.—Part I of subtitle A of title 10, United States Code, is amended by adding at the end the following new chapter:

“CHAPTER 25—TRIBAL MATTERS

See. 499a. Definitions.
499a. Definitions.
499b. Enhancing Tribal education and coordination with Indian Tribes.
499c. Tribal mitigation assessments and reports.
499d. Review of the Tribal mitigation reports.

§ 499a. Definitions

“In this chapter:

“(1) The term ‘Indian Tribe’ has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(2) The term ‘Tribe’ has the same meaning as ‘Indian Tribe’.

“(3) The term ‘Tribal Council’ means a Tribe’s governing entity as established under Tribal or Federal law and recognized by the Secretary.

“(4) The term ‘Tribal land’ means any land or interests in land owned by a tribe or tribes, title to
which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States.

“(5) the term ‘Treaty protected tribal rights and resources’ means any right or resource that has been reserved by a Tribe in a Treaty between the Tribe and the United States.

“(6) The term ‘Secretary’ means the Secretary of Defense, unless otherwise noted.

“§ 499b. Enhancing Tribal education and coordination with Indian Tribes

“(a) MILITARY LIAISONS.—The relevant military service Secretary shall ensure that for each regional command that has responsibility for a geographic area in which there is at least one Indian Tribe that holds Tribal land or has Treaty protected tribal rights and resources, one permanent Federal employee (GS–14 or higher) is appointed on a full-time basis to serve as a military liaison to those Tribes. Each military liaison shall be responsible for—

“(1) providing information and advice to regional commanders, installation commanding officers, and other service members as appropriate regarding Indian Tribes, local tribal traditions and rights;
“(2) demonstrating legal expertise regarding the government-to-government relationship and trust responsibility, Tribal culture and traditions, and treaty protected tribal rights and resources, canons of statutory construction, and other relevant special legal authority that requires consultation with Tribes; and

“(3) serving as a liaison between the regional command and each Indian Tribe described in this subsection.

“(b) ANNUAL TRAINING REQUIREMENT.—

“(1) The military service Secretary shall require all personnel described in paragraph (2) to complete annual training on the culture, history, and law of each Indian Tribe located in the geographic area where the military installation is located.

“(2) Personnel described in this paragraph are commanders of military installations, commanders of regional commands in which there is at least one Indian Tribe with Treaty protected tribal rights, and other service members as identified by the military service Secretary.

“(c) TRIBAL LIASIONS.—The Tribal council of each Indian Tribe described in subsection (a) may designate
one Tribal member to serve as a Tribal liaison between
the Tribe and the regional command.

“(d) COORDINATION.—The liaisons described in sub-
sections (a) and (c) shall meet in person at least four
times per year to discuss proposed projects and identify
potential impacts to Tribal lands and to Treaty protected
tribal rights and resources, and to analyze avoidance and
mitigation options for such impacts, in advance of the for-
mal scoping process required under the National Environ-
mental Policy Act. During these meetings, the regional
commands shall communicate as much unclassified infor-
mation about the proposed project as possible to provide
context and facilitate future discussions.

“(e) REPORTING.—The Secretary shall prepare a re-
port biennially that provides an account of each military
liaisons’ coordination efforts with each of the Tribal liai-
sions located within the geographic region to which they
have been assigned. The report shall include details about
potential impacts identified by each Tribal liaison and ef-
forts made by the Department to modify planned projects
or activities to avoid those impacts to the greatest extent
possible. The report shall be made available to Congress
upon request.
§ 499c. Tribal mitigation assessments and reports

“(a) In General.—(1) In the case of any planned Department of Defense project or activity that occurs within the geographic area where at least one Indian Tribe holds Tribal land or has Treaty protected tribal rights and resources, the military service Secretary and affected Tribes shall jointly prepare a Tribal mitigation assessment and a Tribal mitigation report in accordance with this section.

“(2) For each project described in paragraph (1), the military service Secretary shall, in consultation with each Indian Tribe described in paragraph (1), identify and document all potential impacts to Tribal land and treaty protected tribal rights and resources that may result from any project activities in a ‘Tribal mitigation assessment.’.

“(3) At the conclusion of each assessment conducted under paragraph (2) for a project, the military service Secretary shall, in consultation with each Indian Tribe described in paragraph (1), prepare a document, to be known as a ‘Tribal mitigation report’. Each such report exclude any direct reference to information deemed culturally sensitive by tribes or information sensitive to the Department of Defense mission and shall include—

“(A) a detailed account of the findings from the Tribal mitigation assessment, including a summary
of all feedback received from the Tribe during consultation;

“(B) a list of all identified impacts to Tribal land and treaty protected tribal rights and resources;

“(C) a list of practicable measures that can be taken by the Secretary to avoid impacts, and an explanation of whether each measure will be adopted or not and why;

“(D) a cost estimate for the mitigation identified for each impact; and

“(b) Availability of Tribal Mitigation Report.—The military service Secretary shall make the draft Tribal mitigation report for a project available to each Indian Tribe affected by the project. Consistent with section 552(b)(3) of title 5, the consultations leading to the final report will not be made publicly available. The military service Secretary shall include within the final Tribal mitigation report comments from each affected Indian Tribe, if provided within 60 days of receipt of the draft Tribal mitigation report, including a statement from each affected Indian Tribe indicating whether they concur with the draft Tribal mitigation report contents.

“(c) Purpose of Tribal Mitigation Report.—If an Indian Tribe concurs with the Tribal mitigation report
contents, the Tribal mitigation report shall be used as the basis for a memorandum of agreement between the military service and the Indian Tribe with respect to the proposed actions. Both parties shall negotiate in good faith to enter into a memorandum of agreement.

“§ 499d. Review of the Tribal mitigation reports

“(a) REVIEW.—(1) If an Indian Tribe does not concur with the contents of a Tribal mitigation report, the parties may mutually agree to submit the issue to non-binding mediation before an agreed upon independent, third-party mediator who is knowledgeable about Tribes, Tribal lands, and treaty protected tribal rights and resources. The Tribal mitigation report is not a final agency decision and therefore is not subject to judicial review under the Administrative Procedure Act. Only the issue of impacts to Tribal lands and treaty protected tribal rights and resources and potential compensation is reviewable by this mediator.

“(2) Nothing in this chapter abrogates, diminishes or affects any rights, benefits, privileges or claims of an Indian Tribe or an Indian Tribe’s right to assert its rights, privileges, or benefits, pursue a remedy, or make a claim in a court of competent jurisdiction.”.

(2) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle A of title 10,
United States Code, and at the beginning of part I of such subtitle, are each amended by inserting after the item relating to chapter 24 the following new item:

“25. Tribal matters .............................................................. 499a”.
