

**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:

1 **SEC. 10\_\_ . DEPARTMENT OF DEFENSE TRIBAL MATTERS.**

2 (a) SENSE OF CONGRESS.—It is the sense of Con-  
3 gress that—

4 (1) Indian nations and tribes were independent  
5 sovereigns prior to the formation of the United  
6 States and through treaties, agreements, statutes  
7 and executive orders, Indian nations and tribes were  
8 offered the protection of the United States, guaran-  
9 teed the sanctity of their homelands, and reserved  
10 their original inherent rights to tribal self-govern-  
11 ance;

12 (2) treaties held by federally recognized Indian  
13 Tribes represent binding agreements between Indian  
14 tribal governments and the United States Govern-  
15 ment and honoring the commitments made under  
16 such treaties is a Federal responsibility and a na-  
17 tional priority;

1           (3) the United States government is obligated  
2           to consult with Indian nations and tribes on a gov-  
3           ernment-to-government basis whenever Federal ac-  
4           tivities have the potential to impact Tribal land and  
5           treaty protected tribal rights and resources, and to  
6           avoid or mitigate those impacts wherever practicable;

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

12          (5) improving communication and cooperation  
13          between the Department of Defense, the military  
14          services, and federally recognized Indian Tribes is  
15          important with respect to the United States meeting  
16          its national security obligations and its trust respon-  
17          sibilities, and includes involving the appropriate level  
18          of decisionmakers in the process, and early Tribal  
19          involvement and engagement concerning the process  
20          before any action is taken; and

21          (6) ensuring that the Department of Defense is  
22          able to build, maintain, improve, and secure facilities  
23          supporting its mission is important to national secu-  
24          rity.

1 (b) REVIEW OF DEPARTMENT OF DEFENSE POLI-  
2 CIES AND COMPLIANCE.—

3 (1) REVIEW.—The Secretary shall conduct a re-  
4 view of—

5 (A) military service policies, and compli-  
6 ance with such policies, regarding conduct of  
7 government-to-government consultation between  
8 Indian Tribes with Tribal land and treaty pro-  
9 tected tribal rights and resources;

10 (B) the extent to which such military serv-  
11 ice policies conform to the policies of the De-  
12 partment of Defense and the United States'  
13 trust obligations toward Indian Tribes and the  
14 extent to which such policies can be improved  
15 or, where absent, developed;

16 (C) education programs for installation  
17 and regional commanders and other senior lead-  
18 ers of the military services regarding Indian  
19 Tribes, the government-to-government relation-  
20 ship and trust responsibility, Tribal culture and  
21 traditions, and treaty protected tribal rights  
22 and resources;

23 (D) best practices utilized by other agen-  
24 cies of the United States for government-to-gov-  
25 ernment consultation with and carrying out the

1 United States' trust obligations toward Indian  
2 Tribes; and

3 (E) the capacity of regional commands and  
4 program offices to identify the effects of De-  
5 partment of Defense and military service poli-  
6 cies and actions on Tribal land and treaty pro-  
7 tected tribal rights and resources.

8 (2) REPORT TO CONGRESS.—Not later than  
9 180 days after the date of the enactment of this Act,  
10 the Secretary shall, in coordination with affected  
11 tribes, submit to Congress a report that contains—

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

14 (B) an action plan for identifying gaps in  
15 the compliance with, improving, and, where nec-  
16 essary, further developing Department of De-  
17 fense policies regarding government-to-govern-  
18 ment consultation with and the fulfillment of  
19 the United States' trust obligations toward In-  
20 dian Tribes;

21 (C) a list of best practices for the conduct  
22 of government-to-government consultation be-  
23 tween the military services and Indian Tribes  
24 with Tribal land and treaty protected tribal  
25 rights and resources; and

1 (D) an assessment of the feasibility of var-  
2 ous mechanisms to improve communication  
3 with tribal leaders including but not limited to  
4 the following: the granting of security clear-  
5 ances to qualified tribal liaisons as defined in  
6 section 499b(e); providing relevant information  
7 that is for official use only; providing informa-  
8 tion on potential projects earlier in the budget  
9 cycle; discussion of potential programs outside  
10 of the future years defense program; and any  
11 other tools for improving communication and  
12 cooperation between the Department of De-  
13 fense, the military services, and federally recog-  
14 nized Indian Tribes; and

15 (E) an assessment of the feasibility of var-  
16 ous mechanisms to improve the process by  
17 which compensation for mitigation is awarded  
18 to impacted tribes including but not limited to  
19 the following: opportunities for improved effi-  
20 ciency under existing Sikes Act authorities; al-  
21 ternative funding pathways that exist under  
22 other Department of Defense programs such as  
23 the Readiness and Environmental Protection  
24 Integration program; and the creation of a new

1 pathway expressly for distributing mitigation  
2 funding awarded to federally recognized tribes.

3 (c) DEPARTMENT OF DEFENSE TREATMENT OF IN-  
4 DIAN TRIBES AND OF TRIBAL LAND AND TREATY PRO-  
5 TECTED TRIBAL RIGHTS AND RESOURCES POTENTIALLY  
6 IMPACTED BY DEPARTMENT PROJECTS.—

7 (1) IN GENERAL.—Part I of subtitle A of title  
8 10, United States Code, is amended by adding at  
9 the end the following new chapter:

10 **“CHAPTER 25—TRIBAL MATTERS**

“Sec.

“499a. Definitions.

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

“499c. Tribal mitigation assessments and reports.

“499d. Review of the Tribal mitigation reports.

11 **“§ 499a. Definitions**

12 “In this chapter:

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

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

19 “(3) The term ‘Tribal Council’ means a Tribe’s  
20 governing entity as established under Tribal or Fed-  
21 eral law and recognized by the Secretary.

22 “(4) The term ‘Tribal land’ means any land or  
23 interests in land owned by a tribe or tribes, title to

1 which is held in trust by the United States, or is  
2 subject to a restriction against alienation under the  
3 laws of the United States.

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

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

10 **“§ 499b. Enhancing Tribal education and coordina-**  
11 **tion with Indian Tribes**

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

21 “(1) providing information and advice to re-  
22 gional commanders, installation commanding offi-  
23 cers, and other service members as appropriate re-  
24 garding Indian Tribes, local tribal traditions and  
25 rights;

1           “(2) demonstrating legal expertise regarding  
2           the government-to-government relationship and trust  
3           responsibility, Tribal culture and traditions, and  
4           treaty protected tribal rights and resources, canons  
5           of statutory construction, and other relevant special  
6           legal authority that requires consultation with  
7           Tribes; and

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

11          “(b) ANNUAL TRAINING REQUIREMENT.—

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

17           “(2) Personnel described in this paragraph are  
18           commanders of military installations, commanders of  
19           regional commands in which there is at least one In-  
20           dian Tribe with Treaty protected tribal rights, and  
21           other service members as identified by the military  
22           service Secretary.

23          “(c) TRIBAL LIAISONS.—The Tribal council of each  
24          Indian Tribe described in subsection (a) may designate



1 one Tribal member to serve as a Tribal liaison between  
2 the Tribe and the regional command.

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

14 “(e) REPORTING.—The Secretary shall prepare a re-  
15 port biennially that provides an account of each military  
16 liaisons’ coordination efforts with each of the Tribal liai-  
17 sons located within the geographic region to which they  
18 have been assigned. The report shall include details about  
19 potential impacts identified by each Tribal liaison and ef-  
20 forts made by the Department to modify planned projects  
21 or activities to avoid those impacts to the greatest extent  
22 possible. The report shall be made available to Congress  
23 upon request.

1 **“§ 499c. Tribal mitigation assessments and reports**

2 “(a) IN GENERAL.—(1) In the case of any planned  
3 Department of Defense project or activity that occurs  
4 within the geographic area where at least one Indian Tribe  
5 holds Tribal land or has Treaty protected tribal rights and  
6 resources, the military service Secretary and affected  
7 Tribes shall jointly prepare a Tribal mitigation assessment  
8 and a Tribal mitigation report in accordance with this sec-  
9 tion.

10 “(2) For each project described in paragraph (1), the  
11 military service Secretary shall, in consultation with each  
12 Indian Tribe described in paragraph (1), identify and doc-  
13 ument all potential impacts to Tribal land and treaty pro-  
14 tected tribal rights and resources that may result from  
15 any project activities in a ‘Tribal mitigation assessment.’.

16 “(3) At the conclusion of each assessment conducted  
17 under paragraph (2) for a project, the military service Sec-  
18 retary shall, in consultation with each Indian Tribe de-  
19 scribed in paragraph (1), prepare a document, to be  
20 known as a ‘Tribal mitigation report’. Each such report  
21 exclude any direct reference to information deemed cul-  
22 turally sensitive by tribes or information sensitive to the  
23 Department of Defense mission and shall include—

24 “(A) a detailed account of the findings from the  
25 Tribal mitigation assessment, including a summary

1 of all feedback received from the Tribe during con-  
2 sultation;

3 “(B) a list of all identified impacts to Tribal  
4 land and treaty protected tribal rights and re-  
5 sources;

6 “(C) a list of practicable measures that can be  
7 taken by the Secretary to avoid impacts, and an ex-  
8 planation of whether each measure will be adopted  
9 or not and why;

10 “(D) a cost estimate for the mitigation identi-  
11 fied for each impact; and

12 “(b) AVAILABILITY OF TRIBAL MITIGATION RE-  
13 PORT.—The military service Secretary shall make the  
14 draft Tribal mitigation report for a project available to  
15 each Indian Tribe affected by the project. Consistent with  
16 section 552(b)(3) of title 5, the consultations leading to  
17 the final report will not be made publicly available. The  
18 military service Secretary shall include within the final  
19 Tribal mitigation report comments from each affected In-  
20 dian Tribe, if provided within 60 days of receipt of the  
21 draft Tribal mitigation report, including a statement from  
22 each affected Indian Tribe indicating whether they concur  
23 with the draft Tribal mitigation report contents.

24 “(c) PURPOSE OF TRIBAL MITIGATION REPORT.—If  
25 an Indian Tribe concurs with the Tribal mitigation report

1 contents, the Tribal mitigation report shall be used as the  
2 basis for a memorandum of agreement between the mili-  
3 tary service and the Indian Tribe with respect to the pro-  
4 posed actions. Both parties shall negotiate in good faith  
5 to enter into a memorandum of agreement.

6 **“§ 499d. Review of the Tribal mitigation reports**

7 “(a) REVIEW.—(1) If an Indian Tribe does not con-  
8 cur with the contents of a Tribal mitigation report, the  
9 parties may mutually agree to submit the issue to non-  
10 binding mediation before an agreed upon independent,  
11 third-party mediator who is knowledgeable about Tribes,  
12 Tribal lands, and treaty protected tribal rights and re-  
13 sources. The Tribal mitigation report is not a final agency  
14 decision and therefore is not subject to judicial review  
15 under the Administrative Procedure Act. Only the issue  
16 of impacts to Tribal lands and treat protected tribal rights  
17 and resources and potential compensation is reviewable by  
18 this mediator.

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

24 (2) CLERICAL AMENDMENT.—The table of  
25 chapters at the beginning of subtitle A of title 10,

1 United States Code, and at the beginning of part I  
2 of such subtitle, are each amended by inserting after  
3 the item relating to chapter 24 the following new  
4 item:

**“25. Tribal matters ..... 499a”.**

