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(Original Signature of Member)

116TH CONGRESS  
1ST SESSION

# H. R.

To provide for greater county and State consultation with regard to petitions under the Endangered Species Act of 1973, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Missouri introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To provide for greater county and State consultation with regard to petitions under the Endangered Species Act of 1973, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Meaningful  
5 Petition Outreach While Enhancing Rights of States Act  
6 of 2019” or the “EMPOWERS Act of 2019”.

1 **SEC. 2. GREATER COUNTY AND STATE INVOLVEMENT.**

2 (a) COUNTY AND STATE CONSULTATION ON PETI-  
3 TIONS.—Section 4(b)(3) of the Endangered Species Act  
4 of 1973 (16 U.S.C. 1533(b)(3)) is amended by adding at  
5 the end the following:

6 “(E) LISTING PETITION REVIEW REQUIRE-  
7 MENTS.—

8 “(i) Not later than 30 days before  
9 submitting to the Secretary a petition to  
10 list, delist, or reclassify a species that oc-  
11 curs in the United States, or to revise a  
12 designation of critical habitat of such a  
13 species, the petitioner shall provide to the  
14 chief executive of each county and State in  
15 which the species is located a notice of in-  
16 tent to submit such petition.

17 “(ii) The Secretary shall, upon finding  
18 that a petitioned action to list a species as  
19 a threatened species or endangered species  
20 may be warranted, solicit from the chief  
21 executive of each county and State in  
22 which the species is located—

23 “(I) information regarding  
24 threats to the species and efforts  
25 by the county or State, respec-  
26 tively, to protect the species;

1                   “(II) information about the  
2                   anticipated effects of the action  
3                   requested in the petition in that  
4                   county or State, respectively; and

5                   “(III) the advice of the chief  
6                   executive on whether the status  
7                   of the species merits the action  
8                   requested in the petition, includ-  
9                   ing information in support of  
10                  such advice.

11                  “(iii) The Secretary may verify by  
12                  field testing the information presented in a  
13                  petition asserting that a species is a  
14                  threatened species or endangered species.

15                  “(iv) If a chief executive advises under  
16                  clause (ii)(III) that the petitioned-for ac-  
17                  tion is not warranted, the Secretary may  
18                  not proceed with the action unless the Sec-  
19                  retary demonstrates that information sub-  
20                  mitted in support of such advice by the  
21                  chief executive is incorrect and that the ac-  
22                  tion is warranted.”.

23                  (b) REGULATIONS TO IMPLEMENT DETERMINA-  
24                  TIONS.—Section 4(b)(5) of the Endangered Species Act

1 of 1973 (16 U.S.C. 1533(b)(5)) is amended to read as  
2 follows:

3 “(5) NOTICE REQUIRED.—With respect to any  
4 regulation proposed by the Secretary to implement a  
5 determination referred to in subsection (a)(1), the  
6 Secretary shall—

7 “(A) not less than 90 days before the ef-  
8 fective date of the regulation—

9 “(i) publish a general notice and the  
10 complete text of the proposed regulation in  
11 the Federal Register;

12 “(ii) provide notice of the proposed  
13 regulation (including the complete text of  
14 the regulation) to the chief executive of  
15 county and State in which the species is lo-  
16 cated, and invite such chief executive to  
17 submit to the Secretary a determination as  
18 to whether the proposed regulation is war-  
19 ranted; and

20 “(iii) if the chief executive notifies the  
21 Secretary that the proposed regulation is  
22 not warranted, provide to the chief execu-  
23 tive a record of decision for such deter-  
24 mination, including information made  
25 available to the Secretary that did not sup-

1 port the determination and in writing the  
2 reasons for the determination;

3 “(B) in cooperation with the Secretary of  
4 State, provide notice of the proposed regulation  
5 to each foreign nation in which the species is lo-  
6 cated or whose citizens harvest the species on  
7 the high seas, and invite the comment of such  
8 nation thereon;

9 “(C) provide notice of the proposed regula-  
10 tion to—

11 “(i) each person who requests such  
12 notice;

13 “(ii) each person who has submitted  
14 additional data on the proposed regulation;

15 “(iii) each county, State, and local  
16 government within the jurisdiction of  
17 which the species is located or that is likely  
18 to experience any effects of any measures  
19 to protect the species under this Act; and

20 “(iv) such professional scientific orga-  
21 nizations as the Secretary considers appro-  
22 priate;

23 “(D) publish a summary of the proposed  
24 regulation on the internet; and

1           “(E) promptly hold one public hearing on  
2           the proposed regulation if any person files a re-  
3           quest for such a hearing within 45 days after  
4           the date of publication of general notice.”.

5           (c) CONSULTATION ON FINAL DETERMINATION.—  
6           Section 4(i) of the Endangered Species Act of 1973 (16  
7           U.S.C. 1533(i)) is amended to read as follows:

8           “(i) WRITTEN JUSTIFICATION.—If the Secretary  
9           adopts a final regulation in conflict with advise submitted  
10          by the chief executive of a county or State or fails to adopt  
11          a regulation pursuant to an action petitioned for by such  
12          a chief executive under subsection (b)(3), the Secretary  
13          shall submit to the chief executive—

14                 “(1) a separate written justification explaining  
15                 the failure of the Secretary to adopt regulations con-  
16                 sistent with the advise or petition of the chief execu-  
17                 tive;

18                 “(2) any determination referred to in subsection  
19                 (a)(1) relating to the regulation; and

20                 “(3) all comments received by the Secretary  
21                 that disagreed with all or part of the regulation.”.

22          (d) FACA.—Section 4(b) of the Endangered Species  
23          Act of 1973 (16 U.S.C. 1533(b)) is amended by adding  
24          at the end the following:

1           “(9) FACA.—Consultation with counties and  
2           States regarding petitions and proposed regulations  
3           under this subsection shall not be subject to the  
4           Federal Advisory Committee Act (5 U.S.C. App.).”.