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

IN THE HOUSE OF REPRESENTATIVES

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

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 Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

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

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September 9, 2019 (2:57 p.m.)
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SEC. 2. GREATER COUNTY AND STATE INVOLVEMENT.

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

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“(E) LISTING PETITION REVIEW REQUIREMENTS.—

“(i) Not later than 30 days before submitting to the Secretary a petition to list, delist, or reclassify a species that occurs in the United States, or to revise a designation of critical habitat of such a species, the petitioner shall provide to the chief executive of each county and State in which the species is located a notice of intent to submit such petition.

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

“(I) information regarding threats to the species and efforts by the county or State, respectively, to protect the species;
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“(II) information about the anticipated effects of the action requested in the petition in that county or State, respectively; and

“(III) the advice of the chief executive on whether the status of the species merits the action requested in the petition, including information in support of such advice.

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

“(iv) If a chief executive advises under clause (ii)(III) that the petitioned-for action is not warranted, the Secretary may not proceed with the action unless the Secretary demonstrates that information submitted in support of such advice by the chief executive is incorrect and that the action is warranted.”.

(b) Regulations To Implement Determinations.—Section 4(b)(5) of the Endangered Species Act
of 1973 (16 U.S.C. 1533(b)(5)) is amended to read as
follows:

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

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

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

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

“(iii) if the chief executive notifies the
Secretary that the proposed regulation is
not warranted, provide to the chief execu-
tive a record of decision for such deter-
mination, including information made
available to the Secretary that did not sup-
port the determination and in writing the reasons for the determination;

“(B) in cooperation with the Secretary of State, provide notice of the proposed regulation to each foreign nation in which the species is located or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

“(C) provide notice of the proposed regulation to—

“(i) each person who requests such notice;

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

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

“(iv) such professional scientific organizations as the Secretary considers appropriate;

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


“(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.”.

(c) Consultation on Final Determination.—

Section 4(i) of the Endangered Species Act of 1973 (16 U.S.C. 1533(i)) is amended to read as follows:

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

“(1) a separate written justification explaining the failure of the Secretary to adopt regulations consistent with the advise or petition of the chief executive;

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

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

(d) FACA.—Section 4(b) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)) is amended by adding at the end the following:
“(9) FACA.—Consultation with counties and States regarding petitions and proposed regulations under this subsection shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”