

117TH CONGRESS
1ST SESSION

H. R. 4671

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

JULY 22, 2021

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

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 or the “EMPOWERS Act”.

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

8 (a) COUNTY AND STATE CONSULTATION ON PETI-
9 TIONS.—Section 4(b)(3) of the Endangered Species Act

1 of 1973 (16 U.S.C. 1533(b)(3)) is amended by adding at
2 the end the following:

3 “(E) LISTING PETITION REVIEW REQUIRE-
4 MENTS.—

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

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

20 “(I) information regarding
21 threats to the species and efforts by
22 the county or State, respectively, to
23 protect the species;

24 “(II) information about the an-
25 ticipated effects of the action re-

1 requested in the petition in that county
2 or State, respectively; and

3 “(III) the advice of the chief ex-
4 ecutive on whether the status of the
5 species merits the action requested in
6 the petition, including information in
7 support of such advice.

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

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

20 (b) REGULATIONS TO IMPLEMENT DETERMINA-
21 TIONS.—Section 4(b)(5) of the Endangered Species Act
22 of 1973 (16 U.S.C. 1533(b)(5)) is amended to read as
23 follows:

24 “(5) NOTICE REQUIRED.—With respect to any
25 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 effective 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 located, and invite such chief executive to submit to the Secretary a determination as to whether the proposed regulation is warranted; and

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

“(B) in cooperation with the Secretary of State, provide notice of the proposed regulation

1 to each foreign nation in which the species is lo-
2 cated or whose citizens harvest the species on
3 the high seas, and invite the comment of such
4 nation thereon;

5 “(C) provide notice of the proposed regula-
6 tion to—

7 “(i) each person who requests such
8 notice;

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

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

16 “(iv) such professional scientific orga-
17 nizations as the Secretary considers appro-
18 priate;

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

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

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

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

10 “(1) a separate written justification explaining
11 the failure of the Secretary to adopt regulations con-
12 sistent with the advise or petition of the chief execu-
13 tive;

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

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

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

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

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