

Union Calendar No. 818

115TH CONGRESS
2D SESSION

H. R. 6345

[Report No. 115–1051]

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 12, 2018

Mr. PEARCE (for himself, Mr. CRAMER, Mr. GOSAR, Mr. BIGGS, Mr. SCHWEIKERT, Mr. MULLIN, Mr. MARSHALL, Mr. LUETKEMEYER, Mr. ABRAHAM, Mr. BISHOP of Utah, Mr. DUNCAN of South Carolina, Mr. GLANFORTE, Mr. MEADOWS, Mr. NORMAN, Mr. SMITH of Texas, Mr. SMITH of Missouri, Mr. BANKS of Indiana, Mr. STEWART, Mrs. NOEM, Mr. COLLINS of Georgia, Mr. NEWHOUSE, Mr. GOHMERT, Mr. ESTES of Kansas, and Mr. MCCLINTOCK) introduced the following bill; which was referred to the Committee on Natural Resources

NOVEMBER 27, 2018

Additional sponsors: Mr. BUCK, Mr. PERRY, Mr. ROKITA, Mr. MOONEY of West Virginia, Mr. GUTHRIE, Mr. THOMPSON of Pennsylvania, Miss GONZÁLEZ-COLÓN of Puerto Rico, and Mr. HUNTER

NOVEMBER 27, 2018

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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 2018” or the “EMPOWERS Act of 2018”.

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

12 “(E) LISTING PETITION REVIEW REQUIRE-
13 MENTS.—

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

23 “(ii) The Secretary shall, upon finding
24 that a petitioned action to list a species as
25 a threatened species or endangered species

1 may be warranted, solicit from the chief
2 executive of each county and State in
3 which the species is located—

4 “(I) information regarding
5 threats to the species and efforts
6 by the county or State, respec-
7 tively, to protect the species;

8 “(II) information about the
9 anticipated effects of the action
10 requested in the petition in that
11 county or State, respectively; and

12 “(III) the advice of the chief
13 executive on whether the status
14 of the species merits the action
15 requested in the petition, includ-
16 ing information in support of
17 such advice.

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

22 “(iv) If a chief executive advises under
23 clause (ii)(III) that the petitioned-for ac-
24 tion is not warranted, the Secretary may
25 not proceed with the action unless the Sec-

1 retary demonstrates that information sub-
2 mitted in support of such advice by the
3 chief executive is incorrect and that the ac-
4 tion is warranted.”.

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

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

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

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

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

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

9 “(B) in cooperation with the Secretary of
10 State, provide notice of the proposed regulation
11 to each foreign nation in which the species is lo-
12 cated or whose citizens harvest the species on
13 the high seas, and invite the comment of such
14 nation thereon;

15 “(C) provide notice of the proposed regula-
16 tion to—

17 “(i) each person who requests such
18 notice;

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

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

1 “(iv) such professional scientific orga-
2 nizations as the Secretary considers appro-
3 priate;

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

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

10 (c) CONSULTATION ON FINAL DETERMINATION.—

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

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

19 “(1) a separate written justification explaining
20 the failure of the Secretary to adopt regulations con-
21 sistent with the advise or petition of the chief execu-
22 tive;

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

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

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

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

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