



Florida Conservation Coalition

TAKING ACTION FOR FLORIDA

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FCC Talking Points for SB 1402/HB 7043

SB 1402 and HB 7043 would begin the process of delegating federal permitting authority under Section 404 of the Clean Water Act to the State of Florida. If Florida is granted delegation of this federal wetlands permitting program, the risks to our already threatened wetlands ecosystems are high. Section 404 permits are critical because they help protect Florida's wetlands in large-scale landscape conversion projects such as new cities, mining, and industrial scale projects. Florida has lost approximately 44% of its wetlands since 1845¹.

The Florida Conservation Coalition opposes SB 1402/HB 7043 due to the following:

Lack of Public Participation/Uncertainty of Outcomes for Florida

The State proposes to develop a Memorandum of Understanding (MOU) with the Environmental Protection Agency (EPA) to outline exactly which aspects of the federal 404 permitting program will be delegated to Florida, and how they will be delegated. The Department of Environmental Protection (DEP) will then initiate rulemaking to create the framework for its delegated permitting program to comply with federal law.

- The MOU outlining the priorities and procedures for the 404 program will not be signed until after SB 1402/HB 7043 becomes law and the Legislature will no longer have any control over the delegation process. The rules which the state is required to adopt in order to approximate equivalency between the state and federal permitting programs will not be proposed until later this summer. The public is being asked to support bills without understanding the ultimate effect of the legislation.
- The MOU will be negotiated without formal opportunities for public comment or legal challenge.
- Without knowing how the delegated permitting program will work, we cannot be sure it will be sufficiently protective of Florida's environment.

¹ <http://myfwc.com/conservation/freshwater/wetland-habitat/>

Likely Reduction in Protection for Florida's Natural Resources

- **Delegation will eliminate the protections of NEPA from permit review:** The National Environmental Policy Act requires the federal government to prepare a comprehensive analysis or Environmental Assessment (EA) for each permit it reviews. If the EA concludes that granting a permit will result in a significant impact, a weighing of the impacts and alternatives called an Environmental Impact Statement (EIS) is performed. Working through these processes to achieve an ultimate Finding of No Significant Impact (FONSI) helps negotiate project configurations and wetland protections that preserve wetland functions. These processes are based on science and include opportunities for input from the public and partner agencies. No comparable review will take place if Florida assumes 404 permitting authority, and permitting decisions will be made with far less data. The thorough review weighing the need for the project versus loss of environmental benefits is not provided for under Florida law.
- **We will lose Federal expertise and authority:** Just as our federal and state governments are designed with checks and balances, the federal 404 permitting program is designed to ensure different governmental bodies are responsible for important permitting decisions. The Army Corps of Engineers grants permits, but the EPA provides mandatory guidelines and has veto authority over all permitting decisions. Many other federal agencies with expertise in fish and wildlife, oceanic resources, and national wildlife refuges and parks engage in this process. While the EPA may retain veto power if the State is granted 404 permitting authority in some instances, we are likely to lose federal expertise in most cases. Florida is better protected when we have the expertise of the entirety of federal agencies looking after our natural resources in larger projects.
- **Endangered and threatened species may lose protection:** The Florida Department of Environmental Protection intends to create a Memorandum of Agreement with the U.S. Fish and Wildlife Service to address permits that are likely to impact endangered species. It is unclear how the state will create a permitting program that will not result in diminished protection for endangered species.

Florida's Fiscal and Staffing Capacity to Assume 404 Permitting Program

Florida may not have the expertise, staff level, and fiscal resources to administer the 404 program.

- The federal government will not provide any funds to Florida to administer their permitting program.
- DEP does not plan to hire additional staff to administer their 404 program.
- Last year, the Legislature slashed DEP's budget by 25% (approximately \$325 million) from 2016. Hiring additional staff for the 404 program will come with a fiscal impact.
- If Florida takes over the 404 program, their authority will be expanded and subsequent litigation will increase. Sophisticated scientific and legal expertise will be required for the state to administer the program.