SB1402 Talking Points

Not efficient for the state

- It is unclear how the assumption would be effective and streamlining for the state. Likely, there would be two separate reviewers: one for the ERP and one for the 404 permit. This would equate to additional workload for the state.

Programs are not duplicative

- Even if one reviewer does both the ERP and 404, because the FDEP has stated that it intends to assume a separate federal program and not meld with the ERP program, the state agency staff would still need to be trained to conduct a distinct 404 review. There are very significant differences between state and federal definitions and laws. For example, the definition of “alternatives” or “cumulative impacts” is different between the state and feds. Staff would also need to be trained on Determination Keys produced by the Army Corps of Engineers and wildlife agencies that are used to make judgement calls on the effect of the project on listed species, which is then used to guide consultation with the wildlife agencies.

Likely to be costly for the state

- From our experience, the state ERP program has downsized over the years and has had increasing amounts of permit requests. It is already widely held that more resources are needed for the existing ERP program, including additional need for enforcement and compliance on ERPs. It seems that additional resources would be needed by the state to not only develop the assumption package for EPA, but also to implement the training and additional staff needs to carry out the programs. The resources needed to implement these programs may include more staff, administrative support, and information technology infrastructure to address additional monitoring and enforcement responsibilities. The state would also likely be responsible for processing all pending Corps permits transferred over from the Corps at the time of assumption as well as all future modifications to existing Corps permits. Yet, it is our understanding that no additional budgeting is planned at this time.

- 404 projects can be quite controversial and are often litigated. Is the state willing to take on the liability and cost for potential litigation?
**Protection of natural resources and public opportunities to weigh in may be diminished**

- The state of Florida has advocated against the Clean Water Rule, which would clarify federal jurisdiction. However, the state would be assuming responsibility to protect the very areas it argued should not be jurisdictional, such as geographically isolated wetlands.

- It remains unclear how the dredging and filling of wetlands will be reviewed under the Endangered Species Act, National Environmental Policy Act, and the National Historic Preservation Act. These are very important laws that protect our quality of life, history, and natural environment.
  
  - There is no current draft of an MOA between the state and the wildlife services to better understand how the Endangered Species Act would be complied with. We are concerned that this lack of certainty will result in reduced or absent consideration of endangered species and other natural resources in the 404 process. We would also be concerned if the assumption would result in any reduced window of time or opportunities for the wildlife services to analyze a project.

  - Importantly, the Corps may no longer review permits under the National Environmental Policy Act (NEPA). This important act reviews the impact of projects on aspects of the human environment –everything from environmental impact to societal impact. In southwest Florida, the Army Corps of Engineers had determined that a Cumulative Environmental Impact Statement (EIS) under NEPA was needed to determine the effect of large-scale mining in Lee and Collier counties. NEPA also routinely assists decision-makers identify less damaging alternatives. These types of considerations could fall away and no longer be triggered. This will result in reduced environmental protection.