



CHARLIE CRIST
GOVERNOR

June 30, 2008

Secretary Kurt S. Browning
Secretary of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399

Dear Secretary Browning:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby withhold my approval of and transmit to you my objections to, Council Substitute for House Bill 7059, enacted during the 110th Session of the Legislature of Florida, since statehood in 1845, during the Regular Session of 2008 and entitled:

An act relating to Fish and Wildlife . . .

I have serious concerns over the establishment of seagrass mitigation banks on sovereignty submerged lands. The Board of Trustees of the Internal Improvement Trust Fund is charged with managing and protecting publicly owned lands in environmentally sensitive coastal waters. The provisions in this legislation authorizing the establishment of mitigation banks on sovereignty submerged lands undermines the protection of seagrass beds and other marine and freshwater habitat around the state and raises serious constitutional issues. At best, these provisions provide fertile ground for litigation.

Section 1 of the legislation provides that mitigation banks are to be established pursuant to Section 373.4136, Florida Statutes. Subsection 373.4136 (1)(h), Florida Statutes, requires an applicant for a mitigation bank permit to have "sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank." This type of perpetual interest would be obtained through a sovereignty submerged land conveyance from the Board of Trustees of the Internal Improvement Trust Fund. Such conveyances of land belonging to the people of Florida are subject to constitutional provisions that recognize the unique and irreplaceable character of sovereign lands and confirm the role of the state as trustee of these public resources. Specifically, the Constitution requires an examination of the "public interest" before a conveyance of beds of tidelands and navigable lakes and streams can be approved. Authorizing the conveyance of sovereignty submerged lands for the purpose of creating a seagrass mitigation bank that would create "credits" to be sold to facilitate destruction of seagrasses on sovereignty submerged lands elsewhere could fail the public interest test.

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June 30, 2008
Page Two

I am also concerned that the long-term success of artificially created seagrass beds has not been conclusively established. The likely result of seagrass mitigation banks would be the net destruction of seagrass beds on sovereignty submerged lands. However, the potential adverse impacts from the proposed legislation are not limited to seagrass beds in tidal waters. The legislation allows an applicant to seek approval from the Board of Trustees of the Internal Improvement Trust Fund for any project that destroys marine and freshwater habitat on sovereign submerged land. This could allow destruction of cypress forests along rivers and lakes, salt marshes along tidal streams and estuaries, mangrove forest along the coast, as well as coral reefs. Such destruction does not pass the constitutional public interest test.

Finally, mitigation banks on sovereign submerged lands would create implementation problems. To ensure the "perpetual protection and management of the land within the bank," the mitigation bank owner would have to exclude the public from the area where the attempt at seagrass cultivation or management was being undertaken to avoid prop dredging. Exclusion of the public from tidal waters for the purpose of creating "credits" that would be sold to enable the destruction of seagrasses elsewhere would contravene the public's navigation rights under the common law and under the sovereignty submerged lands doctrine embedded in Article X Section 11 of the Florida Constitution.

Florida's seagrass beds are some of the most productive ecological communities on earth. They are vital to sustaining populations of fish and other marine life for commercial and recreational fishing. These important ecosystems are too valuable to risk, and I feel strongly that this bill creates significant risks and raises constitutional issues that outweigh the positive benefits of this legislation.

It is important to note that this bill does contain several positive provisions the Fish and Wildlife Conservation Commission has sought to enact for many years. Most importantly, this bill provided penalties for careless vessel operation resulting in seagrass damage. This would be a new tool for law enforcement to educate boaters and deter the further destruction of seagrasses. I applaud the efforts of those involved to pass such meaningful reform, and I look forward to working with all interested parties to enact similar measures in the 2009 legislative session.

For the reason stated above, I am hereby withholding my approval of Council Substitute for House Bill 7059, and do hereby veto the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Crist". The signature is fluid and cursive, with a large initial "C".

Charlie Crist