From: Tom Davis <tom1960davis@yahoo.com>
To: Tom Davistom1960davis@yahoo.com
CC: Patel, SwatiSwatiPatel@gov.sc.gov
William L Bethea Jrbill@bbethea.com
Pitts, TedTedPitts@gov.sc.gov
tomdavis@scsenate.govtomdavis@scsenate.gov
Veldran, KatherineKatherineVeldran@gov.sc.gov
Date: 7/16/2012 4:38:12 PM
Subject: Re: Jasper Provisos

Also, temporary provisos can amend permanent law for the year they are operative. There is a Senate rule that says a proviso may not amend permanent law, but that is just a rule. Moreover, when I raised that point of order the Lt Gov ruled it didn't amend permanent law. We need to think about the paragraph 11 problem some more.

Tom

On Jul 16, 2012, at 10:25 PM, Tom Davis <tom1960davis@yahoo.com> wrote:

> Swati, does the double asterisked language in your email actually appear in the IGA? The phrase you highlight and italicize at the beginning of the quoted language of paragraph 11 doesn't help us in that it means the JPO is governed by the laws of SC notwithstanding what the IGA says.
>
> Tom
>
> On Jul 16, 2012, at 9:48 PM, "Patel, Swati" <SwatiPatel@gov.sc.gov> wrote:
>
> > I agree with Bill.
> >
> > IGA, para. 14 provides for â€œExecution of Additional Documentsâ€• and requires â€œthe partiesâ€• to agree to execute additional documents or revise the IGA.
> >
> > IGA, para. 11 is the Governing Law section and may be what Grooms is talking about. It provides as follows:
> >
> > â€œGoverning Law. *Notwithstanding anything to the contrary in the provisions of this Agreement*, GPA shall be governed by the laws of the State of Georgia, and SCSPA shall be governed by the laws of South Carolina, and the Joint Project Office will be governed by laws of South Carolina, in each case with respect to issues of authorization, organization, voting, and similar matters properly governed by the respective states of origin. Activities conducted pursuant to this Agreement shall be governed by the law of the state in which the activities are conducted.â€•
> >
> > **This section provides that the JPO will be governed by SC laws but only to the extent that the laws are not in conflict with the IGA.
> >
> > **SC Statutory Authority**

A point that we did not make in the veto message but is an important point (as Bill noted), current South Carolina permanent law (Section 54-3-115) recognizes the IGA as controlling authority for both states. This statute **mandates** that the SCSPA take all actions to expeditiously develop the Jasper port in accordance with the IGA. The temporary provisos also conflict with this permanent statute.

From: William L Bethea Jr [mailto:bill@bbethea.com]
Sent: Monday, July 16, 2012 3:20 PM
To: 'Tom Davis'; Patel, Swati
Cc: Pitts, Ted; tomdavis@scsenate.gov; Veldran, Katherine
Subject: RE: Jasper Provisos

Tom, I see nothing in the IGA that gives the Legislature any power to amend. There is a typical Governing Laws clause, but it is vanilla /standard in nature and the amendment process contemplated by the agreement specifies that the parties to the agreement shall be the amending parties.
I am working on several very brief outlines covering the following themes, ideally to be discussed somewhat in the order indicated:

Jasper Port not a threat to Charleston
Favoring a Jasper Port is NOT supporting SHEP
The Provisos are not necessary
The Provisos conflict with existing State law and interfere with a lawful contract

Tom, we will see how these flesh out. Some may be useful and others not.
All the best and safe travels.
bill

William L. Bethea Jr.
12 Hanover Way
Bluffton, SC 29910
Tel: 843-837-8600
Cell: 843-384-8446
e-mail: bill@bbethea.com

From: Tom Davis [mailto:tom1960davis@yahoo.com]
Sent: Monday, July 16, 2012 1:38 PM
To: Patel, Swati
Cc: William L Bethea Jr; Pitts, Ted; <tomdavis@scsenate.gov>; Veldran, Katherine
Subject: Re: Jasper Provisos

Bill and Swati,

I recall Grooms pointing out during the proviso debate that one of the last paragraphs of the IGA is drafted in a way as to suggest that the terms of the IGA could be amended by the legislature. I don't have the IGA with me but I recall the language of that paragraph being broad enough to support what Grooms was trying to do with the provisos. Could you please give me your thoughts on that, too? I'd like to argue as well that the proviso is ultra vires. Thx!

Tom

On Jul 16, 2012, at 6:22 PM, "Patel, Swati" <SwatiPatel@gov.sc.gov> wrote:

> Bill and Tom,
> I prepared the attached bullet backgrounder for our office as a basis for our veto messages.
> The actual proviso language is on the second page.
>
> Bill - I also used your excellent April 18 letter which gave us most of our factual background

information. We would love to get your talking points as well and any additional perspective from you on the impact of these provisos on the Jasper project.

In my analysis, my greatest concern is the SRMCâ€™s influence over the JPO process going forward and how these provisos could undermine the Intergovernmental Agreement and usurp the JPOâ€™s authority as set forth in the contract. There are provisions in the Agreement that could conflict with the authority given to the SRMC in the provisos. Legislation should not override or undermine a carefully negotiated contract between two states on a critical economic development project.

The Intergovernmental Agreement and the 2 amendments thereto are also attached for your information.

Please let me know if I can help in any way.

Thanks,
Swati

From: Tom Davis [mailto:tom1960davis@yahoo.com]
Sent: Monday, July 16, 2012 11:32 AM
To: William L Bethea Jr
Cc: Pitts, Ted; Patel, Swati; <tomdavis@scsenate.gov>
Subject: Re: Jasper Provisos

Thx. I arrive in Columbia on Tuesday (tomorrow) evening. Anything you can provide would be appreciated. Please deliver to my Senate office.

Tom

On Jul 16, 2012, at 5:06 PM, "William L Bethea Jr" <bill@bbethea.com> wrote:

> Swati and Ted,
> I am trying to pull together pertinent materials for Tom Davis so that they will be available to him when he arrives in Columbia on Tuesday evening (he is flying back from Italy for the vote on the vetoes). I would appreciate it if you would send us copies of the 2 final provisos 69.4 & 69.5. I want to analyze them in the context of the Intergovernmental Agreement as well as SC Code section 54-3-115 to see if I can find some arguments that he could use. Your veto message already gives good justification, but I want to see if there is anything more there as ammunition. Also, any other materials that you think would be helpful to Tom would be much appreciated.
> Thanks for you help.
> All the best,
> bill
>
> William L. Bethea Jr.
> 12 Hanover Way
> Bluffton, SC 29910
> Tel: 843-837-8600
> Cell: 843-384-8446
> e-mail: bill@bbethea.com

<JOT Intergovernmental Agmt.pdf>

<Jasper Proviso Info.pdf>