

**From:** Tom Davis <tom1960davis@yahoo.com>  
**To:** William L Bethea Jrbill@bbethea.com  
**CC:** Patel, SwatiSwatiPatel@gov.sc.gov  
Pitts, TedTedPitts@gov.sc.gov  
<tomdavis@scsenate.gov>tomdavis@scsenate.gov  
Veldran, KatherineKatherineVeldran@gov.sc.gov  
**Date:** 7/17/2012 6:47:40 PM  
**Subject:** Re: Jasper Provisos

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Just landed in Columbia after 16 hours of flights. Will be at gov office first thing in morning.

Tom

On Jul 16, 2012, at 6:58 PM, "William L Bethea Jr" <bill@bbethea.com> wrote:

Tom,

I think the first sentence of Paragraph 11 is qualified as to scope by the language "in each case with respect to issues of authorization, organization, voting, and similar matters properly governed by the respective states or origins". Examples of that might be FOI or procurement. To me the last sentence says that whatever activities the JPO conducts (i.e. its "conduct" or "activity") shall be governed by the state in which the conduct or activity occurs. Example of this might be eminent domain, labor laws, licensing, etc.

I do not see how they could amend the agreement. Yes, they could pass a law that the JPO's activity would be subject to but that would not amend the agreement. It would simply be another law governing an activity that the JPO might undertake. So, to that extent the Legislature might pass a law preventing some type of activity that the JPO would then be precluded from undertaking. That would, however, then throw you right back into the arguments about violating Section 54-3-115 or interfering with a lawful contractual arrangement between two instrumentalities the Legislature had previously approved and mandated.

All the best,

Bill

William L. Bethea Jr.  
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**From:** Tom Davis [mailto:tom1960davis@yahoo.com]  
**Sent:** Monday, July 16, 2012 5:16 PM  
**To:** William L Bethea Jr  
**Cc:** Patel, Swati; Pitts, Ted; <tomdavis@scsenate.gov>; Veldran, Katherine  
**Subject:** Re: Jasper Provisos

Agree with arguments on the merits for sustaining veto, and that might carry the day for us. But please take a hard look at paragraph 11 as to whether the legislature has the POWER to amend the JPO. The language of paragraph 11 seems very broad and more than just ordinary boilerplate. I at least need to have a response to this since it is the crux of Grooms' argument. Thanks.

Tom

On Jul 16, 2012, at 9:19 PM, "William L Bethea Jr" <bill@bbethea.com> wrote:

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

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**From:** Tom Davis [mailto:[tom1960davis@yahoo.com](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](mailto: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](mailto: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 SRMC's influence over the JPO process going forward and how these provisos could undermine the Intergovernmental Agreement and usurp the JPO'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

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**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

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<JOT Intergovernmental Agmt.pdf>

<Jasper Proviso Info.pdf>