INTRODUCED

April 26, 2012

**H. 5173**

Introduced by Rep. Merrill

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**A** **JOINT RESOLUTION**

TO CLARIFY AND AFFIRM THAT THE SAVANNAH RIVER MARITIME COMMISSION IS THE SOLE AUTHORITY THAT MAY TAKE ANY ACTION PERTAINING TO THE NAVIGABILITY, DEPTH, DREDGING, WASTEWATER AND SLUDGE DISPOSAL, AND RELATED COLLATERAL ISSUES OF THE SOUTH CAROLINA PORTION OF THE SAVANNAH RIVER AND CONCERNING THE SAVANNAH HARBOR EXPANSION PROJECT; TO ESTABLISH VOTING REQUIREMENTS FOR THE SOUTH CAROLINA DELEGATION TO THE JOINT PROJECT OFFICE; TO PROVIDE THAT SOUTH CAROLINA APPOINTEES TO THE JOINT PROJECT OFFICE ARE SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE; AND TO PROVIDE THAT ANY EXPENDITURE OF STATE FUNDS THROUGH THE JOINT PROJECT OFFICE MUST BE UPON THE APPROVAL OF A MAJORITY OF THE SOUTH CAROLINA REPRESENTATIVES ON THE JOINT PROJECT OFFICE.

Whereas, pursuant to Act 56 of 2007, the Savannah River Maritime Commission was established to represent this State in all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels; and

Whereas, the Savannah River Maritime Commission is empowered to negotiate on behalf of the State of South Carolina and enter into agreements with the State of Georgia, the United States Army Corps of Engineers, and other involved parties with regard to the Savannah Harbor Expansion Project on behalf of the State of South Carolina; and

Whereas, the Joint Project Office was established pursuant to an Intergovernmental Agreement entered into on or about January 27, 2008, between the Georgia Department of Transportation, Georgia Ports Authority, and South Carolina State Ports Authority to begin the process of developing an ocean terminal on the Savannah River in Jasper County, South Carolina, known as the Jasper Ocean Terminal; and

Whereas, the Intergovernmental Agreement entered into on or about January 27, 2008, provides that the South Carolina State Ports Authority and the Joint Project Office are governed by the laws of the State of South Carolina; and

Whereas, the Intergovernmental Agreement entered into on or about January 27, 2008, further provides that issues of authorization, organization, voting, and similar matters for the respective members are governed by the laws of the state for which that member represents; and

Whereas, the Georgia Ports Authority has claimed that the Savannah River Maritime Commission is precluded from raising or discussing the impact of the Savannah Harbor Expansion Project on the Jasper Ocean Terminal and the fact that the Savannah Harbor Expansion Project, as proposed, will eliminate the viability of a future Jasper Ocean Terminal; and

Whereas, the basis for the Georgia Ports Authority’s claim against the Savannah River Maritime Commission is the South Carolina State Ports Authority’s signature on the Intergovernmental Agreement entered into on or about January 27, 2008; and

Whereas, a state agency, commission, instrumentality, department, or political subdivision has only such power and authority as delegated or granted by the General Assembly; and

Whereas, the South Carolina State Ports Authority did not bind the State of South Carolina or any other state agency, commission, instrumentality, department, or political subdivision through its signature to the Intergovernmental Agreement entered into on or about January 27, 2008, as the General Assembly did not clearly, expressly, unequivocally, and unambiguously delegate that sovereign authority; and

Whereas, the site upon which the proposed Jasper Ocean Terminal is to be located is encumbered by a federal dredge disposal easement and is an integral part of the Dredge Material Management Program of the Savannah Harbor Expansion Project; and

Whereas, the Joint Project Office purports to be negotiating with the United States Army Corps of Engineers to change the Dredge Material Management Program of the Savannah Harbor Expansion Project in an effort to secure the release of the easement over a portion of the land upon which the Jasper Ocean Terminal may be constructed; and

Whereas, all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels, including the dredging and dredge management related to the Savannah Harbor Expansion Project, fall outside of the limited scope of authority vested in the Joint Project Office by the Intergovernmental Agreement; and

Whereas, only the Savannah River Maritime Commission is statutorily authorized to negotiate with the United States Army Corps of Engineers and the State of Georgia for all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels, including issues and matters related to the Savannah Harbor Expansion Project; and

Whereas, the obligation of the Joint Project Office to expend state funds, or funds derived from the State of South Carolina or any instrumentality of the State of South Carolina, without the approval of a majority of the members of the South Carolina delegation and who have not been subject to approval by a body of the General Assembly raises state constitutional concerns; and

Whereas, requiring a majority of the members of the South Carolina delegation to the Joint Project Office to approve any obligation of state funds, or funds derived from the State of South Carolina or any instrumentality of the State of South Carolina, alleviates any constitutional ambiguity; and

Whereas, confirmation of an appointment is distinguishable from the appointment itself in that the confirming body does not in any sense choose the appointee, and the power of appointment is exercised and exhausted by the initial naming of a individual to the office, and the confirming authority, by rejecting the appointment, does not exercise a power of appointment; and

Whereas, each South Carolina representative serving on the Joint Project Office, by virtue of either appointment or underlying position, should be confirmed by the Senate. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. All members of the South Carolina Delegation to the Joint Project Office are prohibited from casting any vote on all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels, including the dredging or dredge disposal material from the Savannah Harbor Expansion Project, without the prior written consent of the Savannah River Maritime Commission.

SECTION 2. All members of the South Carolina Delegation to the Joint Project Office are prohibited from casting any vote that may obligate or otherwise expend funds related to the placement of dredge disposal material or on any project related to the facilitation of the placement of dredge disposal material related to the Savannah Harbor Expansion Project without the prior written consent of the Savannah River Maritime Commission.

SECTION 3. The South Carolina State Ports Authority is prohibited from any expenditure, allocation, or approval of any monies to be provided to the Joint Project Office unless at least a majority of the members of the South Carolina Delegation on the Joint Project Office vote in favor of the action requiring such expenditure, appropriation, allocation, or approval.

SECTION 4. Any proposed action by the Joint Project Office to obligate or otherwise expend state funds, or funds derived from the State of South Carolina or any instrumentality of the State of South Carolina, or any activity conducted in South Carolina requires that at least a majority of all members of the South Carolina Delegation vote in favor of the action.

SECTION 5. Only the Savannah River Maritime Commission may expend funds related to the placement of dredge disposal material or any project related to facilitating the placement of dredge disposal material pursuant to an appropriation for that specific purpose. To expend the funds the commission must first find that the expenditure is necessary to facilitate a high priority project for the State and that the dredge material is derived from a project that is being undertaken within the parameters of any permit issued by the commission.

SECTION 6. The vote of any member of the South Carolina Delegation to the Joint Project Office is null, void, invalid, ultra vires, and nunc pro tunc if such vote is not one cast as part of the majority vote of all members of the South Carolina delegation.

SECTION 7. The vote of any member of the South Carolina Delegation to the Joint Project Office contrary to this joint resolution is null, void, invalid, ultra vires, and nunc pro tunc.

SECTION 8. Any appointee to the South Carolina Delegation of the Joint Project Office must, either by virtue of the appointment or the appointee’s underlying position, be confirmed by the Senate. The Governor must forward to the Senate for confirmation the names of any members of the South Carolina Delegation who have not been confirmed by the Senate as of the effective date of this act, either by virtue of the appointment or the appointee’s underlying position. If the Senate does not advise and consent to a previously nonconfirmed appointee prior to 2012 Sine Die adjournment, the seat shall be vacant, the appointee shall not serve in hold over status notwithstanding any other provision of law to the contrary, and an interim appointment may not be used to fill the vacancy. The Governor may replace a gubernatorial appointee to the South Carolina Delegation in lieu of referring a current member to the Senate by making another appointment; provided, however, that any replacement appointee is subject to the advice and consent of the Senate.

SECTION 9. Upon entering into the Intergovernmental Agreement, the South Carolina State Ports Authority did not bind, obligate, compromise, or qualify the powers, duties, and authority of the Savannah River Maritime Commission.

SECTION 10. Nothing in this joint resolution must be interpreted or construed in any way to impair, limit, impact, or constrain any and all rights, powers, and privileges of the Attorney General under common law.

SECTION 11. Nothing in this joint resolution or any other Act of the General Assembly must be interpreted or construed in any way to ratify, endorse, affirm, or approve the Intergovernmental Agreement entered into on or about January 27, 2008, between the Georgia Department of Transportation, Georgia Ports Authority, and South Carolina State Ports Authority.

SECTION 12. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 13. This joint resolution takes effect upon approval by the Governor.

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