

APPENDIX ENTRY

November 18, 2008 hearing of the Maine Legislature's Joint Committee on Transportation. Partial transcript.

Transcript of the making of a motion pursuant to Public Law 277 by Maine State Senator Christine Savage to block the Baldacci Administration from signing a conservation easement and its unanimous passage. Transcript includes statements by Senator Christine Savage, Senator Dennis Damon., Representative Ed Mazurek, Mr. Jon Clark, Representative Bob Marley.

Transcription by Appellant Ron Huber from recording of the . Recording available.
Excerpts

SENATOR CHRISTINE SAVAGE: Mr. Chair, I offer a proposal for consideration. I move the compromise agreement, including the conservation easement reached by Sears Island Joint Use Planning Committee be accepted in principle, but left unsigned by this committee until the port is permitted on Sears Island. The transportation committee will submit a bill to the 124th legislature, directing the Maine Department of Transportation to move forward with all practical speed to see that a port is permitted on Sears Island. Once that permit is in hand, the agreement before us today will be signed. Thank you.

SENATOR DENNIS DAMON. That's in the form of a motion?

SENATOR SAVAGE Yes.

SENATOR DAMON. Is there a second?

REPRESENTATIVE ED MAZUREK. "Second."

SENATOR DAMON. It is the responsibility of this committee and indeed of this legislature to set policy. Policy for the entire state of Maine and If we would use this agreement which has been so difficult to craft and so important in that policy If we use that in setting policy. That's the responsibility of this committee.

I can't personally as a member of the legislature and certainly as a member of this Transportation Committee give up my right my authority and my duty to the

entire state in terms of setting policy by being constrained by what I'm told a group of people felt. So whether it's signed or unsigned to me is somewhat immaterial, although I appreciate the concern of those, and respect the compromise being brought forth by Senator Diamond.

MR. JON CLARK, OPLA. I'm Jon Clark deputy director of the Office of Policy and Legal Analysis, and in that capacity serving as council to the committee. It's my understanding that there's no signatory role for this committee as such with regard to the agreement. The committee is then in the role of making its decision under the statute as to whether you approve this or not and obviously with whatever conditions you might wish to add. Which is obviously within this committee's purview.

I think as a clarification it would be helpful, to actually have the legislation you're talking about be the final step, in terms of the committee makes its determination with whatever conditions, and that then go forward next session with legislation that says specifically "Here's the authority of the department; here's the conditions in terms of going forward. "

In that sense what you're actually signing off on is the department's actual action going forward with regard to conveying an easement for mitigation bank purposes and the conditions under which they would do that act.

SENATOR DAMON. You mentioned something about the authority to convey an easement for a mitigation bank. And that as you recognize, ladies and gentlemen is the second kind of report you have before us. It is an application by the department to the Corps of Engineers to use an umbrella mitigation bank, for not only the purposes of Sears Island abut also for broader services as they may pertain to projects within the Department of Transportation and the rest of the state. That has not been proven, at this point. There may be some question as to whether or not there is sufficient authority in statute to allow the Department of Transportation to convey such interests.

If for instance this motion were to succeed, I believe that since you said there'd be a bill submitted, it's very conceivable that that bill could include that language which would give the authority to the department. I see it as a reasonable thing."

REPRESENTATIVE BOB MARLEY. How I viewed it that this was that this was an agreement that was coming forward basically for us to vote up and down, but that this would be the end of the process. It seems like people feel like this is the end of the process I'm hearing from you, if I'm correct, that this isn't. This is really kind of the beginning of the process. This is sort of where there's mutual agreement but there's all these other pieces that still need.... Am I accurate about that?

OPLA JON CLARK I don't want to say that if you decide that you want to approve this, that you couldn't as a committee make a decision and that the department legally couldn't go forward. I think there are questions at least in my mind about how clear that is, and, given controversy surrounding this project over the years, the priority is probably a good thing. So I think that the series of events you are describing leading up to legislation which would clearly state 'here's the authority, here's the conditions. If there are going to be any conditions', would provide a good priority in this situation in which I think priority is a needed thing."

SENATOR DAMON The time has come. Motion before us it to accept the -I'm going to paraphrase this if I leave anything out let me know - to accept the negotiated conservation easement but to leave it unsigned temporarily, and that we this committee seek the authority to report out a bill to the 124th legislature of the state of Maine instructing the Maine Department of Transportation to pursue the permitting of a port on the island of Sears in the port of Searsport, and once that permit is signed, that the conservation easement will then become signed. Is that the essence of your motion?

SENATOR SAVAGE: Yes

SENATOR DAMON: All those in favor of that motion signify by raising your hand. Voting yea: Representative Mazurek, Representative Rosen, Senator Diamond, Senator Savage, Senator Damon, Representative Marley, Representative Brown, Representative Fisher, Representative Thomas, Representative Theriault, Representative Hogan and Representative Peoples.

It's unanimous of all those present and voting. Thank you very much, committee.

END OF TRANSCRIPT.