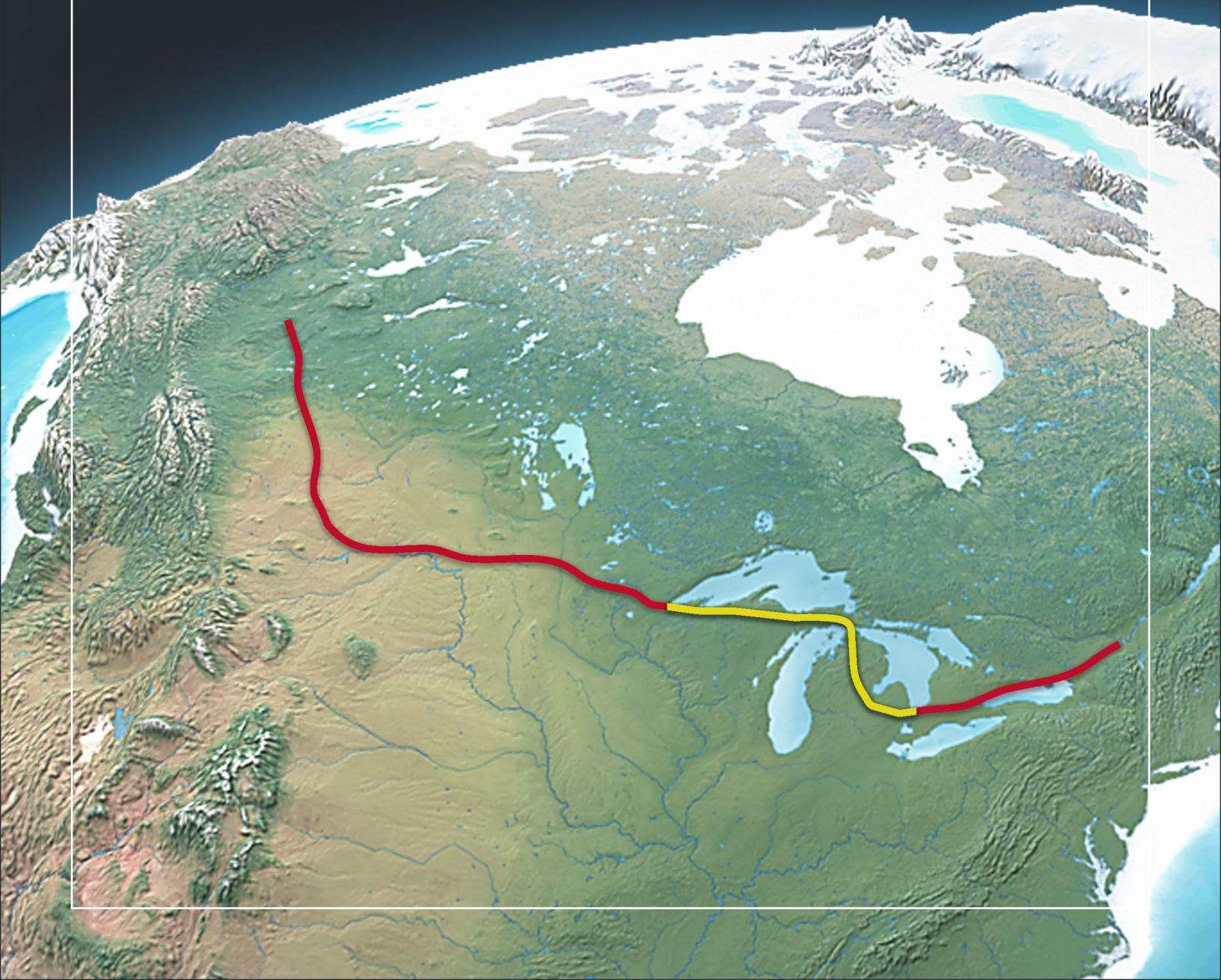


PROGRESS MICHIGAN PRESENTS A SPECIAL REPORT:

# STRAIT — TO THE — SURFACE

*How the Mackinac Straits Corridor Authority  
Puts Canadian Oil Interests Above All Else*



# INTRODUCTION

**B**y now, most Michiganders are aware of Line 5, the aging oil pipeline that acts as a shortcut for the Canadian fossil fuel market while threatening our Great Lakes. People know there is some controversy about Enbridge operating this pipeline, but not so much on the details. The goal of this report is to bring clarity to how state government decision making on Line 5 is fundamentally flawed, with the cards stacked in Enbridge's favor.

Michiganders must understand that they are being kept in the dark about Line 5. The government body in charge of decision making about Enbridge's nearly 70-year-old pipeline has been working hand-in-glove with this Canadian fossil fuel giant. Thus, this body has failed to do its job of providing oversight while facing little public accountability. Known as the Mackinac Straits Corridor Authority, its existence reflects how corporate interests continuously get put ahead of the public it is supposed to serve.

This report provides a snapshot of just one facet of the Line 5 debate. While Line 5's environmental threat could be eliminated by the stroke of a pen from President Joe Biden, our state's role in continuously allowing corporations to dominate over the public interest merits

greater attention. Anyone concerned about the Great Lakes and a government that is accountable to its constituents should know how the Mackinac Straits Corridor Authority operates.

## HERE'S THE TL;DR:

- Gov. Rick Snyder created the Mackinac Straits Corridor Authority during the 2018 lame duck to hamstring the next administration.
- The Authority is a natural outgrowth of the anti-environment and pro-corporation track record from Gov. Snyder.
- The Snyder administration had numerous conflicts of interest with lobbyists and corporations advocating for Enbridge's Line 5 as they pursued this course.
- The state of Michigan has attempted to give Enbridge the ability to build an oil tunnel with few strings attached because of the Authority and how it was created.
- Building an oil tunnel in the Straits of Mackinac contradicts climate goals and common sense, so our elected officials must work to repeal the law (PA 359) that set up this course for disaster.

# HOW DID THE AUTHORITY COME TO BE?

During the final days of Gov. Rick Snyder's second term, also called the 2018 Lame Duck session, the Authority began its perilous journey. Shortly before Michiganders cast their ballots in the 2018 midterm elections, Snyder finalized his decision on Line 5 in October: to build an oil tunnel through the Mackinac Straits. As part of the deal Enbridge got, they would lease the tunnel from the Authority for a period of 99 years.<sup>1</sup> Indeed, just a couple years after Enbridge caused an oil spill for 17 straight hours in the Kalamazoo River on its Line 6B, one of the largest inland oil spills in American history<sup>2</sup>, the state of Michigan gave Enbridge another shot with few strings attached to this deal.

The timing of Snyder's actions on Line 5 and from Republican lawmakers in the final days of his administration and the legislative session came across as orchestrated. With almost surgical precision, the Republican-controlled legislature enabled an unelected body to move forward with constructing a fossil fuel pipeline just so the next Democratic governor wouldn't

have her way. This unraveling was done under Senate Bill 1197, introduced by Sen. Tom Casperson (R - Escanaba), and signed into law by Gov. Snyder on December 1, 2018 as Public Act 359. It established a new three-member Authority to oversee the construction and operation of a Mackinac Straits<sup>3</sup> oil tunnel. That same day, Gov. Snyder announced his selections for the Authority, composed of Republican and Democratic members as set forth by its original mandate.<sup>4</sup> Environmental advocates at the time expressed their dissatisfaction with the Authority and its backroom dealmaking.<sup>5</sup>

The original intention of Senate Bill 1197 was to give the Mackinac Bridge Authority (MBA) oversight of a Line 5 oil tunnel. However, heavy pressure from the public, MBA board members, and the former MBA chairman succeeded in making the Snyder administration and their legislative allies change direction at the last minute. The text for SB 1197 was not even available for lawmakers or the public to read until the bill was already on the Senate floor. That final text was the first time

that the idea of establishing the Mackinac Straits Corridor Authority to oversee this project was introduced. The original three member board serving for six years with the only requirement for service being that no more than two can come from one political party was meant to entrench the Authority and ensure that the incoming administration would not get a say in who would serve to oversee the oil tunnel.

The move to authorize decision making power in an unelected Authority attempted to seal the Line 5 tunnel's fate regardless of who would eventually hold office come 2019. Snyder greenlighting the Line 5 tunnel project was just one of a handful of harmful environmental decisions the Republican-controlled legislature made through the 2018 Lame Duck.<sup>6</sup> These pro-business, anti-Great Lakes policies solidified Snyder's reputation as trying to run the state government as an extension of large corporations, and this exact mindset still influences the Authority's mandate and decision making to this day.

## SO WHAT DOES THE AUTHORITY EVEN DO?

Just a few days after Gov. Snyder signed the law creating the Authority, its three members met for the first time during the 2018 Lamé Duck session and approved the oil tunnel agreement.<sup>7</sup> The law states that the Authority shall oversee construction of a “utility tunnel” under the Mackinac Straits,<sup>8</sup> and its official website states it has a role of providing “independent oversight” throughout the proposed tunnel’s lifespan.<sup>9</sup> The Authority, while overseeing approval for the proposed oil tunnel project, has also weighed in on allowing things like fiber optic cable to travel through the same “utility tunnel.”

Officially, the Authority falls under the Michigan Department of Transportation (MDOT). The Authority does not have regularly scheduled meetings,

*The law states that the Authority shall oversee construction of a “utility tunnel” under the Mackinac Straits, and its official website states it has a role of providing “independent oversight” throughout the proposed tunnel’s lifespan.*

and according to its website has met just eight times since it was first established in December 2018. Thus far, the Authority has met twice in 2022, and during its February 2022 meeting, members approved the bid process for request for proposals for tunnel construction, which is currently underway.<sup>10</sup>

Government decision making around pipelines involves a complex array of actors, especially for ones like Line 5 that have international ramifications. But Gov. Snyder vested control of this tunnel

outside of a fair process, leaving these critical issues to be decided by an unaccountable, unelected government body. Now, the Authority is overseeing construction on a tunnel project that is at least several years out until breaking ground.<sup>11</sup> This means the role the Authority now plays is that of a state-sanctioned cheerleader for Enbridge — their show of oversight works as a PR gimmick to prolong Line 5’s intended lifespan while still being vulnerable to oil spills as its future remains uncertain amid legal and political controversy.

# WHY IS THE AUTHORITY A FLAWED ENTITY?

From its inception, the Authority has acted in favor of Enbridge and has skirted public opinion and accountability. This track record is largely because of the Authority being Gov. Snyder's creation and the intimate relationship between his administration and pro-Line 5 interest groups.

Before the Authority was formally established, media reports sounded the alarm about the relationships between Snyder officials and Enbridge. The Canadian oil corporation's lobbyist brought on Brad Wurfel, who resigned after his role in the Flint water crisis as the spokesperson for the state's environmental quality agency, and also employed the wife of Snyder's previous chief of staff. These connections received public scrutiny, especially after the administration shared talking points and press releases with Enbridge's lobbyist in advance. Furthermore, another former Snyder official who handled energy and pipeline issues left the administration to become a lobbyist, and their firm was eventually contracted by the state on Line 5 matters.<sup>12</sup>

As the Snyder administration worked alongside pro-Line 5 special interest groups like the Michigan Chamber of Commerce,<sup>13</sup> together they pursued a years-long campaign to give private industry advantages at the expense of democratic civic engagement. This included putting collective bargaining rights on the chopping block, opposing pro-voter initiatives like Proposals 2 and 3 in the 2018 election, and giving a foreign oil corporation preferential treatment ahead of the will of the people.

The way the Authority was initially set up reflected an unwillingness to have stakeholders outside of the network of

*Before the Authority was formally established, media reports sounded the alarm about the relationships between Snyder officials and Enbridge.*

corporate interests at the table. PA 359, the law which established the Authority, provides that each of its members are to serve a term of six years or until a new successor is appointed, whichever comes later.<sup>14</sup> This six year term clause was the basis for Gov. Gretchen Whitmer and Attorney General Dana Nessel's push to invalidate the Authority, as a judge eventually found it unconstitutional.<sup>15</sup> However, the judge's ruling concluded this six year term provision did not invalidate the entire law creating the Authority, which allowed the Authority to continue.<sup>16</sup>

And to this day, the Authority disregards public opinion and transparency while bolstering Enbridge's case. Between the handful of times the Authority has met in its three-and-a-half year existence, Enbridge has been given a larger megaphone in Authority proceedings than the public. For example, the September 2021 Authority meeting featured an "informational" presentation from Enbridge where company employees essentially controlled deliberations throughout the meeting.<sup>17</sup> The subsequent Authority meeting in February 2022, where its members voted to approve the bid process for request for proposals for tunnel construction contracts, the vote was taken prior to public comment,<sup>18</sup> putting a Canadian oil corporation's will ahead of Michiganders. Moreover, only two of the three Authority members were present at this meeting.

The Authority has allowed Enbridge to avoid public accountability, notably from its refusal to cooperate with a Freedom of Information Act request from environmental groups.<sup>19</sup> Request for proposal documents for tunnel construction contracting were kept on an Enbridge private server, keeping this information out of the public eye until the very last minute. This news came after concerns at the onset of the COVID pandemic that Enbridge would pay the Authority's consulting fees as state government funding was temporarily halted, but this plan was scrapped once funding resumed.<sup>20</sup> Had this foreign corporation been allowed to pay for its own independent oversight, it would have set an improper precedent. Interestingly, under the original agreement between the Authority and Enbridge, the company was required to set up an escrow account with \$15 million in it with further monetary obligations down the road.<sup>21</sup> This is a similar arrangement that was made in Minnesota under Enbridge's operation of Line 3, where Enbridge paid more than \$2 million to law enforcement, reimbursing them for costs while police surveilled Indigenous protestors at pipeline sites.<sup>22</sup>

As pro-Line 5 interests have continually taken center stage during Authority deliberations, the concerns of Michigan's 12 federally recognized Tribal governments have yet to be fully addressed. The Mackinac Straits have been an important cultural landmark for Anishinaabek people for centuries, and Tribal nations have long-standing treaties with the federal government protecting their right to these waterways. Until Democratic member Paul Novak was appointed to the Authority, concerns from Tribal and environmental interests were unrecognized.

## **THE MACKINAC STRAITS HAVE BEEN AN IMPORTANT CULTURAL LANDMARK FOR ANISHINAABEK PEOPLE FOR CENTURIES, AND TRIBAL NATIONS HAVE LONG-STANDING TREATIES WITH THE FEDERAL GOVERNMENT PROTECTING THEIR RIGHT TO THESE WATERWAYS.**

The first meeting with Novak on the Authority voiced these concerns,<sup>23</sup> and a Tribal consultation policy was approved in February 2022,<sup>24</sup> yet no meaningful interaction with Tribal nations has taken place. Bay Mills Indian Community President Whitney Gravelle stated when the Authority adopted the newly-adopted consultation policy that, "It's coming well too late in the process... The Mackinac Straits Corridor Authority has been meeting for almost two years now, and during that time there have been no tribal voices involved in their decision making process."<sup>25</sup> The state of Michigan has effectively ceded decision making authority to an unaccountable public body on an issue rife with unethical lobbying and pressure influence from industry groups, allowing the Authority to act as a rubber stamp on Line 5.

# WHAT IS AT STAKE IF THE AUTHORITY CONTINUES ITS CURRENT COURSE?

The Authority is contradicting its stated role to provide “independent oversight” when multiple flaws exist if a new oil tunnel in the Great Lakes was built.

Construction of new fossil fuel infrastructure is being implemented by the Authority amid a climate crisis, where reducing pollution is necessary to prevent catastrophic damage. A Straits tunnel is indeed additional fossil fuel infrastructure, and recent reports from the Intergovernmental Panel on Climate Change have made clear that projects like the Line 5 tunnel go directly against meeting these important climate goals. Moreover, our state’s own MI Healthy Climate Plan that was released in April 2022 calls for complete carbon neutrality by 2050 with a 52 percent reduction in greenhouse gas emissions by 2030. Climate scientists estimated that creating a Line 5 tunnel would emit roughly 27 million metric tons of carbon into our atmosphere annually, about the equivalent of 10 coal-fired power plants.<sup>26</sup>

Along with long-term climate

impacts, there are numerous geotechnical issues that engineering experts have raised regarding tunnel construction that could result in not just a potential oil spill, but an underwater explosion as well.<sup>27</sup> Despite these devastating concerns, the Authority takes Enbridge’s word for project safety.

There is no rational cost-benefit analysis that can justify new fossil fuel infrastructure in the Mackinac Straits when taking into account both short- and long-term impacts. When the tunnel project was first announced, cost estimates ranged from \$350 to \$500 million.<sup>28</sup> Between rising construction input and labor costs, new estimates have found that building a new tunnel could cost close to \$2 billion, which Enbridge has said they will pay for.<sup>29</sup>

While Enbridge and the Authority attempt to ram through with this costly project, Enbridge filed a report with the Federal Energy Regulatory Commission that said Line 5 could become obsolete by the beginning of

2041 — just 13 years after the earliest estimates of tunnel completion. This means that Line 5 could become a stranded asset, or useless, in less than two decades.<sup>30</sup> The 2041 timeframe, however, contradicts PA 359 by Enbridge’s own admission, which indicates that the company is likely using Line 5 as a ploy to increase its bottom line for as long as possible. Line 5 poses an immediate threat to the Great Lakes,<sup>31</sup> but the Snyder administration and Republicans in the legislature worked together to grant Enbridge a 99-year lease on the Mackinac Straits.

Enbridge continues to make about \$2 million dollars per day while they violate the terms of their agreement with the state of Michigan and threaten the Great Lakes. As the Authority continues its long walk to finalize their 99-year lease with the Canadian fossil fuel giant, Line 5’s current oil spill threat to the Great Lakes is what merits its shutdown.

# WHAT NEEDS TO BE DONE TO PROTECT THE GREAT LAKES FROM UNACCOUNTABLE GOVERNMENT BODIES?

**M**ichiganders elected Gov. Whitmer and Attorney General Nessel for many reasons, but among them to protect the Great Lakes from dangerous oil spills. Yet, their landmark advocacy to protect the Great Lakes, hold Enbridge accountable and transition to a carbonless economy is threatened by the unscrupulous bidding of the Authority, fossil fuel interests and the bureaucratic hoops Enbridge is allowed to jump through for the Line 5 tunnel project.

As the Michigan Public Service Commission currently considers whether or not to grant routing approval for the tunnel, and as the U.S. Army Corps of Engineers is beginning an environmental impact statement, which could take around three years to complete,<sup>32</sup> the back and forth around Line 5 will not go away for quite some time.

Attorney General Nessel is pursuing a legal case against Enbridge for violating the state's public trust doctrine, which protects the waters and bottomlands of the Great Lakes in the public interest.<sup>33</sup> Michiganders

would suffer if Line 5 was to rupture, and a full court press must be run in order to avoid this catastrophic threat. Taxpayers should not be on the hook once Line 5 becomes a stranded asset or inflicts damage to the Great Lakes. The Authority has already approved consulting contracts in 2022 for the project totaling \$762,258.03.<sup>34</sup> All of these costs to taxpayers comes as Enbridge has not yet followed up on the state's recommendation to get liability insurance for Line 5.<sup>35</sup> Michigan elected officials should pursue all legal remedies to prevent their constituents from having to pay the price for bad governance.

The Authority has continually proved it is an unaccountable body that will undermine the public's stewardship of the Great Lakes in favor of a multinational oil corporation. Because of this willful negligence, the Michigan Legislature must repeal PA 359 in order to invalidate the law which created the Authority, or at the very least bring on some fresh perspectives who will advocate for the Great Lakes.

[Contact your legislator to provide real oversight accountability on Enbridge's Line 5 tunnel to keep our Great Lakes free of oil spills.](#)



# TIMELINE

**NOVEMBER 13, 2017:** After Enbridge found numerous deficiencies in Line 5's route, Snyder [stated](#), "I am no longer satisfied with the operational activities and public information tactics that have become status quo for Enbridge. It is vitally important that Enbridge immediately become much more transparent about the condition of Line 5 and their activities to ensure protection of the Great Lakes."

**JANUARY 26, 2018:** Snyder [rejects](#) request of Michigan Pipeline Safety Advisory Board to temporarily shut down Line 5 despite the innumerable risks of not taking action.

**APRIL 11, 2018:** After Line 5 was found dented in three areas in its Mackinac Straits portion, Gov. Snyder [called for](#) "expediting the federal permitting process to allow for protective measures to be installed in the Straits of Mackinac."

**JULY 11, 2018:** Bridge and Michigan Campaign Finance Network [report](#) that Snyder admin officials shared talking points in advance with an Enbridge lobbyist, with the reporters concluding that, "Michigan leaders have allowed lobbyists and officials with direct relationships to Enbridge to offer extensive input about the fate of the pipeline."

**DECEMBER 12, 2018:** Snyder signs legislation creating the Authority, with Detroit News [stating](#), "Snyder's picks for the authority appear to be representatives who support the tunnel construction."

**DECEMBER 17, 2018:** Mike Zimmer, who was Snyder's cabinet director, [steps down](#) from MSCA after it was just created due to a "possible legal conflict," becoming the second MSCA member to resign in the entity's infancy.

**DECEMBER 18, 2018:** The Authority meets for the first time to approve an agreement between the state and Enbridge to construct the tunnel. Upon this news, [Snyder stated](#), "Today's actions will result in the removal of the oil pipeline from the bottom of the Straits of Mackinac, maintain critical infrastructure connections between our peninsulas, provide energy security for residents of the Upper Peninsula and northern Michigan and create good-paying jobs."

**JANUARY 2, 2019:** Gov. Whitmer asks AG Nessel to opine on the constitutionality of PA 359, the law that created the Authority. Nessel [states](#), "Let me remind those who stand to benefit from this Act: take heed that this request raises serious legal concerns. In no way should any entity rely on this Act to move forward unless and until these matters have been resolved."

**FEBRUARY 4, 2019:** Michigan Chamber of Commerce submitted comments to AG Nessel to continue with tunnel deliberations, with [Holcomb stating](#), "The agreements between the Corridor Authority and Enbridge and the special safeguards agreed to by Enbridge with the State, should not be undermined or set aside."

**MARCH 8, 2019:** Michigan Court of Claims [upholds](#) constitutionality of PA 359 while severing its provision for six year terms for members, as Michigan Constitution only permits four year terms.

**MARCH 28, 2019:** After Gov. Whitmer asks for an AG opinion, Nessel [finds](#) that PA 359 is unconstitutional and that it lacked proper legal vetting upon the law's creation.

**MARCH 5, 2020:** Jim Olson, an environmental legal expert, [submits](#) public comment to the Authority that claims that PA 359 "puts private gain and economic interests above the State's and public's paramount trust interest in the waters and soils of the Great Lakes. The law and entangled state and Enbridge agreements represent one of the largest, if not largest, threats in the state's history to the state's ownership and public trust duty to protect the public's rights and uses from private takeover or harm to the Great Lakes."

**JUNE 11, 2020:** Michigan Court of Appeals [upholds](#) constitutionality of PA 359 from lower court ruling.

**JUNE 25, 2020:** An Ingham County Circuit Court judge [ordered](#) Line 5 to be temporarily shut down after sustaining damage and that Enbridge violated the terms of its easement from the state of Michigan.

**SEPTEMBER 20, 2021:** Progress Michigan lambasts Authority for allowing Enbridge to have an "informational" session at one of their meetings, [saying](#) the Authority "outsourc[e]d administrative duties of their meetings to a multinational fossil fuel corporation."

**FEBRUARY 16, 2022:** Authority approves request for proposal process for tunnel construction, allowing contract bidding to begin. Enbridge [stated](#), "Once we receive all permits, we are committed to starting construction within the timeframe stated in the Tunnel Agreement with the State of Michigan."

## FOR MORE INFORMATION, READ:

Michigan Advance, "[Enbridge, Nessel fight over Line 5 pipeline in holding pattern](#)," May 1, 2022.

Clean Water Action, "[Line 5: A History](#)."

Native American Rights Fund, "[Enbridge's Line 5 Pipeline](#)."

# FOOTNOTES

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