

RE: Oppose Senate Bill 1197 and Pending Mackinac-Enbridge Tunnel Agreement that Guarantees Another 10 Years of Enbridge's Risky Line 5 Oil Pipeline Threatening Our Great Lakes Economy

Dear Legislators:

We, the undersigned organizations, are united in opposition to Senate Bill 1197 ("SB 1197") and any related or subsequent proposals to broaden the mission of the Mackinac Bridge Authority ("MBA") to include owning a proposed tunnel for Canadian-based Enbridge to build a private oil pipeline under the Straits of Mackinac. Senate Bill 1197 would undermine the important single-purpose mission of the Mackinac Bridge Authority and put Michigan on a dangerous and risky path of allowing Enbridge's Line 5 to remain operating for a decade or more on the Mackinac Straits lakebed.

We believe a vote for Senate Bill 1197 is a vote to keep Enbridge's oil pipelines the Mackinac Straits as a threat to the Great Lakes and in support of a dangerous proposal to dramatically alter more than six decades of Mackinac Bridge stewardship. Michigan citizens want Line 5 oil pipelines removed as a threat to the Great Lakes. Senate Bill 1197 would keep Line 5 in the water for at least 7-10 years, thus risking an oil spill

Senate Bill 1197 is disguised as a means to develop a public "utility tunnel," but is really a planned giveaway of public resources -- including the bottomlands of the Mackinac Straits and the reputation, purse strings, and powers of government -- to a private entity. It threatens the fiscal integrity of the Mackinac Bridge, risks Michigan taxpayer money, and allows a foreign company to use the MBA's powers to condemn private land. That's why Bill Gnodtke, a Republican appointed by former Gov. John Engler in 1997 to the MBA who just stepped down as chairman on November 1, 2018, opposes Senate Bill 1197 and the proposal to undo more than six decades of focused bridge authority stewardship. The proposed legislation and the associated MBA-Enbridge tunnel agreement are a false solution to Enbridge Line 5's serious and ongoing oil pipeline emergency and guarantees another 10 years of high-risk Enbridge Line 5 oil pipeline operations in the open waters of the Great Lakes.

This letter outlines the extraordinary legal and financial risk and liability the Mackinac Bridge Authority will assume as tunnel owner for Enbridge's private purposes and financial gain. Key problems with this proposed legislation and pending agreement include:

1. **Risking our Great Lakes Economy by Extending the Life of a 65-Year-Old Pipeline for Another 10 Years.** Both the proposed expansion of the MBA's authority and Enbridge tunnel agreement fundamentally ignores the threat posed by Line 5 operating in the open waters of the Great Lakes. The Line 5 pipelines will continue to pump 23 million gallons of oil per day through the Straits of Mackinac during a decade of tunnel construction, if it's ever built; adding minor safety measures won't prevent a catastrophic spill. According to several economic studies, a spill from Line 5 at the Straits of Mackinac could deliver a blow of between \$1.8 and \$6.3 billion in damages to our natural resource, drinking water supply, property, and economy.

2. **Circumventing Modern Constitutional and Environmental Laws.** The agreement attempts to bypass Michigan's public trust and environmental laws that protect the Great Lakes, and seeks to exploit the 1950's law that authorized the iconic Mackinac Bridge to own an oil tunnel for private purposes. If the tunnel is the most feasible and prudent alternative to transporting the majority of oil to Canada, then Enbridge should propose to construct one on its own, and then apply and obtain all necessary authority and permits, conveyances, public trust soils and waters under the Great Lakes Submerged Lands Act, finance and build it. This is the common-sense solution because the State of Michigan avoids grave liability risks and costs if Enbridge terminates or abandons building a tunnel under the Great Lakes. The pending agreement doesn't compel Enbridge to build a tunnel.
3. **Threatening the Fiscal Integrity of the Bridge and Burdening Taxpayers with Unknown Liability.** It turns out that Michiganders are already poised to foot the initial bill of \$4.5 million allocated in a 2018 supplemental appropriations bill for planning and legal services related to scouting out Enbridge's private tunnel. In addition, if the current fiber optic lines that currently cross the Mackinac Bridge were moved to the proposed tunnel, Enbridge would likely gain more than \$500,000 a year in lease revenue that supports current bridge operations. The agreement risks the structural and fiscal integrity of the Mackinac Bridge by seeking to saddle the Mackinac Bridge Authority with owning the oil tunnel and leasing it for 99 years to Enbridge, which is notorious for major oil spills across Michigan and misleading state and federal regulators about Line 5's condition in the Straits. Even if or when an oil tunnel is built, by making the Mackinac Bridge Authority responsible for the oil tunnel, Michigan taxpayers may end up footing the bill if there's a spill or collapse--not Enbridge Energy, the company using our Great Lakes as a shortcut for transporting oil that Michigan doesn't need or use. MBA ownership and oversight and liability is non-delegable. The Mackinac Bridge Authority will assume Enbridge's liabilities and resultant oil spill or explosion damages on the legal cause of action for failure to oversee and safely maintain the tunnel, regardless of the terms of any proposed lease agreement with Enbridge. The MBA is not a traditional government agency protected by the governmental immunity doctrine. Even if the Governor attempts to grant immunity via lame duck legislation, the MBA would be engaged in a proprietary function in its 99-year lease with Enbridge and retain liability for any negligent oversight.
4. **Tarnishing the MBA's single-mission as a Bridge Authority:** The MBA has a "sterling record of connecting our peninsulas," as noted by the Governor, and we believe the MBA must maintain this track record by focusing only on protecting the iconic Mackinac Bridge. It must avoid mission creep and reject assuming responsibility for owning a tunnel under our Great Lakes. The legal fact of the matter is that the MBA Act's authority was expressly intended for the single mission and purpose in 1952 to build the Mackinac Bridge in and across the Straits of Mackinac. That mission has been accomplished. To this public end, the Mackinac Bridge Authority has operated for 61 years as an independent authority free from outside influence and political pressure. Each of Michigan's governors since that time has appointed members to the MBA who have fiercely defended the independence of the MBA. In 2004, when the Michigan Department of Transportation attempted to take over the MBA, including control of engineering, finances, and employees of the Authority, the legislature defeated the Department's takeover attempt by

enacting amendments to the MBA Act reaffirming the MBA's independent authority from state agencies and government officials. The House and Senate unanimously voted to supplement the independence of the MBA. Given the MBA's strong historical independence, it is shocking that Governor Snyder and his state agencies are now attempting to do the very thing that both the MBA Act and the legislature unanimously prohibited in 2005.

5. **Ignoring Safer and Less Costly Alternatives.** Feasible and prudent alternatives exist to risking the MBA and the Great Lakes for a tunnel to house a private pipeline. One alternative is for Enbridge to adjust and use the excess design capacity in its 1,900-mile network of high-volume pipelines that run into and out of the Midwest, including former Line 6B (now Line 78) located across the southern part of the Lower Peninsula to Sarnia and Detroit. Line 6B can be easily adjusted to handle up to 800,000 barrels per day for far less money, without the MBA, Straits of Mackinac, and the current Line 5 that remains an unacceptable economic and ecological risk and that can be decommissioned over a relatively short period of time.
6. **Partnering with an Untrustworthy Corporation.** Describing Enbridge's performance as "Keystone Kops," the National Transportation Safety Board concluded that Enbridge's negligence caused the 2010 rupture and resulted in \$1.2 billion in cleanup costs along a 40-mile stretch of the Kalamazoo River. Similarly, Enbridge has misled state and federal regulators by concealing for decades violations of the 1953 Easement Agreement with the State of Michigan that allowed large sections of Line 5 pipeline in the turbulent Straits to be unsupported. Considering Enbridge's well-documented history of negligence that caused the largest inland oil spill in U.S. history near Kalamazoo and Enbridge's Line 5 decades-long pipeline easement violations with the State of Michigan, how can lawmakers and the public be assured that Enbridge will honor any agreement with the MBA?
7. **Ignoring Public Opinion to Decommission Line 5.** Strong partisan concern about Line 5 and the risk of a catastrophic oil spill remains high in public opinion polling (82%), with Michiganders continuing to support a Line 5 shutdown by wide margins. This is consistent with the thousands of citizens and businesses, hundreds of organizations, and dozens of communities and tribes across Michigan that have added their names to the call for shutting down Line 5, and are now rising up against a proposed tunnel replacement.

In conclusion, we urge you as our elected representatives and lawmakers to oppose this dangerous Senate Bill 1197. We thank the 18 lawmakers still in the legislature (Marleau, Schuitmaker, Booher, Casperson, Hansen, Jones, Pavlov, Proos, Robertson, Emmons, Rocca, Bieda, Brandenburg, Hildenbrand, Hood, Hoppgood, Hune, and Nofs) along with Governor-elect Whitmer for standing up in 2005 for the independence of the Mackinac Bridge Authority and the Mackinac Bridge.

Now the MBA and the Mighty Mac urgently need you again. Thank you.

Sincerely,

Liz Kirkwood, Executive Director

For Love of Water (FLOW)

Other authorized co-signers for endorsing groups