

SENATE BILL 1197

Questions & Answers | What is the trouble with this legislation?

Who Opposes?

Eight past board members of the Mackinac Bridge Authority have issued dire warnings about splitting the focus of the Mackinac Bridge Authority to oversee a utility tunnel, including Dan Musser III and William Gnodtke, and business leaders including Chris Shepler and Larry Bell.

The Big Takeaway

It is likely to take 10 years or more to construct a tunnel through the Straits of Mackinac. By then, Enbridge Line 5 will be 75-years-old. Line 5 had an expected life of 50 years.

Know Your Partner

Enbridge's history in Michigan of negligence lead to the largest inland oil spill in U.S. history in 2010 near Marshall, MI. With decades-long pipeline safety violations of its current Easement Agreement, how can we be assured that it will live up to its promises in any lease agreement with the Mackinac Bridge Authority?



About This Document

Organizations contributing to this Q&A document include Clean Water Action, Michigan League of Conservation Voters, Oil & Water Don't Mix, Sierra Club of Michigan, For Love Of Water (FLOW), Friends of Mackinac Bridge.

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Q1 **It is likely to take 10 years or more to construct a tunnel through the Mackinac Straits, if found to be feasible. Line 5 was constructed with an expected life of 50 years and by 2028, it would be in service 75 years. If Line 5 ruptures in the Mackinac Straits or anywhere along its 535-mile path through Michigan after the bridge authority has committed to owning the tunnel, will the Mackinac Bridge Authority still be obligated to the tunnel project?**

A1 The proposed agreement between the Mackinac Bridge Authority (MBA) and Enbridge will keep the existing Line 5 pipelines running – and risking a major oil spill – for at least another 10 years with no assurance that the tunnel will ever be built. But for now Enbridge is the sole operator and owner of Line 5 in the Mackinac Straits and is responsible for any damages resulting from a pipeline rupture. That changes once the Mackinac Bridge Authority enters the legal picture as owner of a utility tunnel leased to Enbridge if Enbridge or its U.S. subsidiary, Enbridge Energy Partners, seeks protection under U.S. Bankruptcy laws.

Q2 **Has the Mackinac Bridge Authority undertaken a thorough fiscal and legal examination of Enbridge’s oil tunnel proposal, including an analysis of the implications of ownership for the State of Michigan and Michigan taxpayers under a worst-case disaster scenario?**

A2 The Mackinac Bridge Authority was created over 60 years ago as a completely independent, stand-alone entity for a single public purpose: to build, operate and protect the operations of the Mackinac Bridge. This proposal would dramatically alter that mission for the first time in the bridge’s iconic history. Successful businesses undertake careful planning and make prudent decisions when faced with significant proposed changes to its business plan and operations. That is not what is happening with this mission-altering bridge authority proposal. Moreover, the governor in his rush to finalize this deal never even consulted the Mackinac Bridge Authority to examine and thoroughly study the financial and legal implications of owning a tunnel for Enbridge’s benefit for 99 years.

Q3 **What is the overall effect of the governor’s proposal to have the Mackinac Bridge Authority own a utility tunnel whose main purpose is to facilitate Line 5 oil pipelines operations in the Mackinac Straits?**

A3 Gov. Snyder’s proposal allows Enbridge to consider a tunnel under the public trust bottom lands of the Mackinac Straits without being required to build it while legitimizing the continuation of the dangerous existing Line 5 indefinitely. He attempts to use the Mackinac Bridge Authority, established in 1952, as a shell company to take possession of a private oil tunnel and lease it to Enbridge for 99 years. This structure circumvents environmental, water, public participation, and public trust laws tied to Michigan’s Constitution of 1963 and required for Enbridge to

obtain lawful authorization to continue use of the existing Line 5 and any future tunnel. The agreement fails to require Enbridge to protect property owners, businesses, tribal fishing, the Great Lakes and their public trust uses from “all damage or losses,” as the 1953 Easement mandates, by accepting only \$1.8 billion in financial assurances for an oil spill danger estimated to exceed \$6 billion.

Q4

Considering Enbridge’s history in Michigan of negligence leading to the largest inland oil spill in U.S. history in 2010 near Marshall, MI and decades-long pipeline safety violations of its current Straits of Mackinac Line 5 Easement Agreement with the State of Michigan, how can we be assured that it will live up to its promises in any lease agreement with the Mackinac Bridge Authority?

A4

If history serves as a guide, we should expect Enbridge to prioritize maximizing profitability in operating Line 5 over any commitments or legal obligations it has with the Mackinac Bridge Authority and the State of Michigan. The National Transportation Safety Board (NTSB) described Enbridge as the “Keystone Kops” and concluded it was Enbridge’s negligence that caused the 2010 rupture and resulted in \$1.2 billion in cleanup costs along a 40-mile stretch of the Kalamazoo River. Enbridge claims to have reformed itself since then, but has concealed violations of the 1953 Easement Agreement with the State of Michigan for years while large sections of Line 5 in the turbulent Straits went unsupported. Enbridge also concealed missing pipeline protective coatings necessary to prevent underwater corrosion. We should expect similar avoidance and foot-dragging from Enbridge in the future even if the future of the Great Lakes, Michigan’s economy, and the Mackinac Bridge Authority are at risk.

Q5

Enbridge’s 1953 easement agreement with the State of Michigan requires Enbridge to “indemnify and hold harmless the State of Michigan from all damages or losses” from a Line 5 pipeline rupture or other related damages. The Oct. 3, 2018 agreement between Enbridge and the State of Michigan limits Enbridge to providing “financial assurance mechanisms” totaling \$1.878 billion and is not indexed to inflation. A credible study by a Michigan State University ecological economist in May put the damage estimate at more than \$6 billion. Also, general liability policies often contain pollution exclusions that do not cover clean-up costs. Does this mean the State of Michigan and Michigan taxpayers could be on the hook in the event of an Enbridge pipeline rupture?

A5

Once the Mackinac Bridge Authority owns a tunnel whose primary purpose is to facilitate oil transport in Line 5, the MBA will be responsible for any damages Enbridge avoids through the U.S. Bankruptcy Court. The Mackinac Bridge Authority per MCL 254.302 is a public benefit corporation and an agency of the State of Michigan. It is an entity that can sue or be sued in its name now for the purpose to provide and maintain a system of highways and bridges for the use and convenience of its inhabitants. The same standard will apply if the bridge

authority owns a tunnel regardless of the potential for additional amending legislation allowing it to contract with a Canadian corporate entity for the purpose of building a non-transportation tunnel. It will own and ultimately be legally responsible for the tunnel's lifetime.

Q6 **Is the Mackinac Bridge itself (as an asset), or the toll revenue from the bridge, vulnerable to being diverted to either pay for Enbridge's failure to abide by the contractual agreement or for cleanup of any oil discharges from pipelines?**

A6 The Mackinac Bridge Authority 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 bridge authority would be engaged in a proprietary function in its 99-year lease with Enbridge and retain liability for any negligent oversight. Further, existing fiberoptic infrastructure that leases space on the Mackinac Bridge itself, would likely be replaced within the proposed utility corridor, where companies would be sub-leasing space in the corridor from Enbridge, taking away current lease incomes from the Mackinac Bridge Authority and diverting it to Enbridge.

Q7 **Enbridge has claimed that, although it does not have adequate insurance to cover the cost of its full liability in the event of a worst-case oil spill disaster in the Straits of Mackinac, it would be able to cover any liability through its revenues and assets. What happens if Enbridge, through bankruptcy or other developments, does not cover the total cost of a worst-case oil spill disaster in the Mackinac Straits?**

A7 The Oct. 3 agreement between the state and Enbridge caps Enbridge's responsibility damages at \$1.8 billion. If Enbridge or its U.S. subsidiary, Enbridge Energy Partners, sought protection in U.S. bankruptcy courts, the state, the bridge authority and Michigan taxpayers would likely be forced to cover any damage losses while homeowners, businesses and others impacted by worst-case oil spill could end up waiting years or decades before seeing any relief.

Q8 **If Line 5 operations are disrupted for an extended period of time along its 535-mile path through Michigan, oil transport revenues to fund the tunnel's operations and service any tunnel construction debt held by the Mackinac Bridge Authority will cease during that period. How would this impact the bridge authority's finances and Michigan taxpayers?**

A8 That is a question the Mackinac Bridge Authority must examine along with other financial implications of tunnel ownership. The governor will attempt to indemnify the bridge authority through legislation in lame duck but the bridge authority as tunnel owner cannot escape liability from any negligent oversight.

Q9

If Enbridge fails to stand by the terms of the Oct. 3 and any subsequent agreements with the state, such as shutting down the existing Line 5 pipeline during adverse weather, what would the state's recourse be since it will now be tied financially and legally to Line 5 operations in the Mackinac Straits? Will the state be forced to tolerate these and other potential violations because of its partnership with Enbridge and financial ties?

A9

Once the state is legally tied to Enbridge's Line 5 operations it becomes, in effect, Enbridge's business partner. The Oct. 3 agreement, in fact, describes the utility tunnel operation as a proposed "public-private partnership" and we can expect that Enbridge will leverage that relationship for any advantage it can extract from the state, including protection from enforcing environmental, safety and other measures the protect the Great Lakes.

Q10

Would building a tunnel through the Straits of Mackinac be paid for entirely by Enbridge, or would taxpayer funds be used towards this project which primarily benefits a private corporation?

A10

The state has already requested a supplemental appropriation of \$4.5 million to cover expenses related to Straits of Mackinac infrastructure projects. If the Mackinac Bridge Authority is amended, the proposed third agreement between Enbridge and the state would require MBA to obtain permits for the project on Enbridge's behalf, and defend Enbridge from any legal challenges related to this project. \$4.5 million is only the beginning. This project will likely require tens of millions of dollars in tax money if it is allowed to move forward.

Q11

Q11 Does the legislature have adequate information regarding the Mackinac Bridge major projects proposed over the next ten years, such as re-decking the bridge? And if so, are there safeguards to assure the people of Michigan that the Bridge projects will be performed to required standards and will be completed on time and on budget?

A11

For 61 years, the Mackinac Bridge Authority has successfully operated the Mackinac Bridge as envisioned by the Legislature when it created the Mackinac Bridge Authority with a single mission. Before voting on any bridge authority legislation that fundamentally alters that mission, lawmakers will want to know if there is any ironclad way of safeguarding the Mackinac Bridge operations from being impacted by bridge authority mission creep that will accompany oversight of a major infrastructure project like a Mackinac Straits tunnel.

Q12

If the Legislature amended the Mackinac Bridge Authority Act to allow the authority to own a Mackinac Straits utility tunnel would that ensure the tunnel will be built or could Enbridge at some point walk away from its agreement?

A12

Some believe that because there is no guarantee that Enbridge will build the proposed tunnel and it could walk away from the agreement before making any firm legal commitments and keep operating Line 5 pipelines in the Mackinac Straits lakebed under the status quo Easement Agreement until it ruptures.

The agreement provides only for “discussions” for a tunnel. It is non-binding and says that the Mackinac Bridge Authority should at some future point negotiate “a public private partnership” agreement.

