Attorney general: Straits Corridor Authority formation unconstitutional

The Straits Corridor Authority, a body created in December 2019 to oversee the Line 5 pipeline and other utility lines beneath the Straits of Mackinac, has released an opinion stating that portions of last year’s lame-duck bill which created the Authority itself, and that the authority created by the bill, which would house the Authority within the Straits Corridor Authority, were unconstitutional.

LANSING — Michigan Attorney General Dana Nessel, with the leadership of Gov. Rick Snyder and Republicans in the legislature, was appointed with the intention of securing the Authority beneath the Straits tunnel. Michigan, which would house the Authority, was created in December 2019.

But according to a legal opinion issued Thursday by the Attorney General, the bill no longer accurately represents the purpose of the Authority as expressed in its title. Nessel argued that by amending the language of the bill to create a separate Straits Corridor Authority, the bill no longer accurately represented the purpose of the Authority as expressed in its title.

Rep. Lee Chatfield, R-Levering, whose district includes Emmet County, was among the legislators involved in passing the legislation last winter.

"Approving the new tunnel in northern Michigan is the right thing to do for our state, our waterways, and for our future," he said in a statement Thursday. "Hundreds of thousands of people rely on the line to heat their homes and survive, and we all rely on the Great Lakes for our economy and our way of life. It is well past time to put aside political talking points and campaign rhetoric and just do the right thing. This administration needs to protect the people of our state, secure our critical Mackinac Straits and approve the tunnel project immediately."

In a press release, Enbridge officials said they were "surprised and disappointed" with the decision.

"Enbridge worked in good faith with the Michigan government on the tunnel project," said Enbridge chief legal officer Bob Rooney. "We disagree with the Attorney General's opinion and continue to believe in the benefits of the tunnel."

Legislators approved plans for the Corridor Authority within the last few weeks of December.

Then, within the span of a week, Snyder appointed members to the board, the board conducted its first meeting and board members approved a series of agreements with Enbridge.

In her opinion, Nessel said that "any court determination that Act 359 is unconstitutional would likely apply that decision retroactively, and conclude that the Mackinac Straits Corridor Authority, its Board, and any action taken by the Board are void from their inception."

As it currently sits, Line 5 runs across a wide stretch of the Upper and Lower Peninsulas on its way from Superior, Wisconsin to Sarnia, Ontario. It splits into dual pipelines underneath the Straits of Mackinac. According to agreements between Snyder and Enbridge, that stretch of line would be replaced with a new segment contained within the proposed tunnel.

Current Gov. Gretchen Whitmer asked Nessel to review the legality of Public Act 359 within her first 24 hours in office at the start of this year.

McKay said the next steps will be to "take another concerted look," at alternatives to Line 5, and take appropriate actions that will both "provide protection to all our water resources and energy" to the people who need it.