RECEIVED by MSC 1/23/2026 2:52:26 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

In re APPLICATION OF ENBRIDGE ENERGY TO REPLACE & RELOCATE LINE 5

BAY MILLS INDIAN COMMUNITY, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, NOTTAWASEPPI HURON BAND OF THE POTAWATOMI, ENVIRONMENTAL LAW & POLICY CENTER, and MICHIGAN CLIMATE ACTION NETWORK,

Appellants,

v.

MICHIGAN PUBLIC SERVICE COMISSION, et al.,

Appellees.

MSC No. 168335

COA Nos. 369156, 369159, 369161, 369162, 369165 (consolidated)

MPSC Case No. U-20763

REPLY BRIEF OF APPELLANTS

Attachment 1

Comparison of March 25, 1970 Draft MEPA Bill with July 27, 1970 Final MEPA Bill

(Pages 573-578 and 624-626 of the Appendix, Volume 2, of Appellant For Love of Water submitted on November 14, 2025 in the Companion Appeal before this Court, MSC No 168346)

3/2026 2:52:26 PM

Comparison of Substitute House Bill No. 3055 (March 25, 1970) with Enrolled House Bill No. 3055 (July 27, 1970)

March 25, 1970 Draft MEPA Bill	**July 27, 1970 Final MEPA Bill**
Section 4 (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.	Section 4 (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect ~~the public trust in~~ the air, water and other natural resources or the public trust therein ~~of the state~~ from ~~unreasonable~~ pollution, impairment or destruction.
(2) If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with Public Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. In so remitting the court may grant temporary equitable relief where necessary for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate consideration by the agency has been given to the protection of the public trust in the air, water or other natural resources of the state from unreasonable pollution, impairment or destruction and whether the agency's decision is supported by competent material and substantial evidence on the whole record.	(2) If administrative, licensing or other ~~such~~ proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with and subject to the provisions of ~~Public~~ Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. In so remitting the court may grant temporary equitable relief where necessary for the protection of ~~the public trust in~~ the air, water and other natural resources or the public trust therein ~~of the state~~ from ~~unreasonable~~ pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate ~~consideration by the agency has been given to the~~ protection ~~of the public trust in the air, water or other natural resources of the state~~ from ~~unreasonable~~ pollution, impairment or destruction has been afforded ~~and whether the agency's decision is supported by competent material and substantial evidence on the whole record~~.

3/2026 2:52:16 PM

(3) If the agency's consideration has not been adequate, and notwithstanding that the agency's decision is supported by competent material and substantial evidence on the whole record, the court shall adjudicate the impact of the defendant's conduct on the public trust in the air, water or other natural resources of the state in accordance with this act.	(3) Upon completion of such proceedings ~~If the agency's consideration has not been adequate, and notwithstanding that the agency's decision is supported by competent material and substantial evidence on the whole record~~, the court shall adjudicate the impact of the defendant's conduct on ~~the public trust in~~ the air, water or other natural resources and on the public trust therein ~~of the state~~ in accordance with this act. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this act.
(4) Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, notwithstanding the provisions to the contrary of the Public Act No. 306 of the Public Acts of 1969, pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.	(4) Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, notwithstanding the provisions to the contrary of the ~~Public~~ Act No. 306 of the Public Acts of 1969, pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.
Section 5 (1) In the administrative, licensing or other proceeding, and in a judicial review thereof made available by law, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.	Section 5 (1) Whenever ~~In the~~ administrative, licensing or other proceedings, and ~~in a~~ judicial review thereof are ~~made~~ available by law, the agency or the court may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to ~~may~~ intervene as a party on the filing of a ~~verified~~ pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is ~~reasonably~~ likely to have, the effect of ~~unreasonably~~ polluting, impairing or destroying ~~the public trust in~~ the air, water or other natural resources or the public trust therein ~~of the state~~.

3/2026 2:52:36 PM

(2) In any administrative, licensing or other proceeding, the agency shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to have such effect so long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.	(2) In any such administrative, licensing or other proceedings, and in any judicial review thereof, any ~~the agency shall consider the~~ alleged ~~unreasonable~~ pollution, impairment or destruction of ~~the public trust in~~ the air, water or other natural resources or the public trust therein, ~~of the state~~ shall be determined, and no conduct shall be authorized or approved which does, or is ~~reasonably~~ likely to have such effect so long as~~, considering all relevant surrounding circumstances and factors,~~ there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.
	(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.
Section 6 This act shall be supplementary to existing administrative and regulatory procedures provided by law and in any action maintained under this act, the court may remand the parties to such procedures. Nothing in this section shall prevent the granting of interim equitable relief where required and for so long as is necessary to protect the rights recognized herein. Any person entitled to maintain an action under this act may intervene as a party in all such procedures. Nothing herein shall prevent the maintenance of an action, as provided in this act, to protect the rights recognized herein, where existing administrative and regulatory procedures are found by the court to be inadequate for the protection of the rights. At the initiation of any person entitled to maintain an action under this act, such procedures shall be reviewable in a court of competent jurisdiction to the extent necessary to protect the rights recognized herein. In any judicial review the court shall be bound by the provisions, standards and procedures of this act	Section 6 This act shall be supplementary to existing administrative and regulatory procedures provided by law ~~and in any action maintained under this act, the court may remand the parties to such procedures~~. ~~Nothing in this section shall prevent the granting of interim equitable relief where required and for so long as is necessary to protect the rights recognized herein. Any person entitled to maintain an action under this act may intervene as a party in all such procedures. Nothing herein shall prevent the maintenance of an action, as provided in this act, to protect the rights recognized herein, where existing administrative and regulatory procedures are found by the court to be inadequate for the protection of the rights. At the initiation of any person entitled to maintain an action under this act, such procedures shall be reviewable in a court of competent jurisdiction to the extent necessary to protect the rights recognized herein. In any judicial review the court shall be bound by the provisions, standards and procedures of this act~~

and may order that additional evidence be taken with respect to the environmental issues involved.	~~and may order that additional evidence be taken with respect to the environmental issues involved.~~

3/2026 2:52:26 PM

RECEIVED by MSC 1/23/2026 2:52:26 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

In re APPLICATION OF ENBRIDGE ENERGY TO REPLACE & RELOCATE LINE 5

FOR LOVE OF WATER,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee.
_____/

Supreme Court No. 168346

Court of Appeals No. 369163

MPSC Case No. U-20763

APPENDIX TO APPELLANT FOR LOVE OF WATER'S BRIEF ON APPEAL
VOLUME 2

James M. Olson (P18485)
Rebecca L. Millican (P80869)
Scott W. Howard (P52028)
OLSON & HOWARD, P.C.
520 S. Union Street
Traverse City, MI 49684
olson@envlaw.com
rebecca@envlaw.com
scott@envlaw.com

Kacey Cook (P85672)
FOR LOVE OF WATER
223 Lake Avenue, Suite B
Traverse City, MI 49684
kacey@flowwateradvocates.org

Riyaz A. Kanji (P60296)
Lucy W. Braun (P55357)
Christopher C. Miller (P85763)
Grace R. Judge (*pro hac vice forthcoming*)
KANJI & KATZEN, P.L.L.C.
P.O. Box 3971
Ann Arbor, MI 48106
rkanji@kanjikatzen.com
lbraun@kanjikatzen.com
cmiller@kanjikatzen.com
gjudge@kanjikatzen.com

Counsel for Appellant For Love of Water

RECEIVED by MSC 1/14/2026 9:01:52 PM

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

NUMBER	DOCUMENT	PAGES
	VOLUME 2	
Legislative History – Michigan Environmental Protection Act		
10	Introduced House Bill No. 3055 (April 1, 1969)	568-572
11	Substitute House Bill No. 3055 (March 25, 1970)	573-578
12	Letter from Joseph H. Thibodeau to Hon. Thomas J. Anderson and Hon. Warren N. Goemaere, Co-Chairs, Comm. on Conservation and Recreation (March 18, 1970)	579-593
13	Letter from Joseph L. Sax to Peter W. Steketee (April 2, 1970)	594-595
14	Prof. William J. Pierce, Prof. Joseph L. Sax, William A. Irwin, Responses to "Thoughts on H.B. 3055" at 24, Univ. of Mich. Law Sch. (March 20, 1970)	596-623
15	Enrolled House Bill No. 3055 (July 27, 1970)	624-626
16	Interview by Paul Sabatier with Joseph Sax (May/June 1972)	627-642

Dated: November 14, 2025

Respectfully submitted,

James M. Olson (P18485)
Rebecca L. Millican (P80869)
Scott W. Howard (P52028)
OLSON & HOWARD, P.C.
520 S. Union Street
Traverse City, MI 49684
(231) 946-0044
olson@envlaw.com
rebecca@envlaw.com
scott@envlaw.com

/s/ Riyaz A. Kanji
Riyaz A. Kanji (P60296)
Lucy W. Braun (P55357)
Christopher C. Miller (P85763)
Grace R. Judge (*pro hac vice forthcoming*)
KANJI & KATZEN, P.L.L.C.
P.O. Box 3971
Ann Arbor, MI 48106
(734) 769-5400
rkanji@kanjikatzen.com

Kacey Cook (P85672)
FOR LOVE OF WATER
223 Lake Avenue, Suite B
Traverse City, MI 49684
(231) 944-1568
kacey@flowwateradvocates.org

lbraun@kanjikatzen.com
cmiller@kanjikatzen.com
gjudge@kanjikatzen.com

Counsel for Appellant For Love of Water

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2026 9:01:52 PM

10

SUBSTITUTE FOR HOUSE BILL NO. 3055

Reported out 3-25-70

A bill to provide for actions for declaratory and equitable relief for protection of the air, water and other natural resources of the state; to prescribe the rights, duties and functions of the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity; and to provide for judicial proceedings relative thereto.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "Anderson environmental protection act of 1970".

2480 '69 - Sub. (1)

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2026 9:01:52 PM

Sec. 2. The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the appropriate circuit court for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

Sec. 3. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or other natural resources of the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that considering all relevant surrounding circumstances and factors there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from unreasonable pollution, impairment or destruction. Except as to the affirmative defense, nothing in this section shall be construed to affect the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a report to the court in the action. The costs thereof may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

(2) If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with Public Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

the Compiled Laws of 1948. In so remitting the court may grant temporary equitable relief where necessary for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate consideration by the agency has been given to the protection of the public trust in the air, water or other natural resources of the state from unreasonable pollution, impairment or destruction and whether the agency's decision is supported by competent material and substantial evidence on the whole record.

(3) If the agency's consideration has not been adequate, and notwithstanding that the agency's decision is supported by competent material and substantial evidence on the whole record, the court shall adjudicate the impact of the defendant's conduct on the public trust in the air, water or other natural resources of the state in accordance with this act.

(4) Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, notwithstanding the provisions to the contrary of Public Act No. 306 of the Public Acts of 1969, pertaining to

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Sec. 5. (1) In the administrative, licensing or other proceeding, and in a judicial review thereof made available by law, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.

(2) In any administrative, licensing or other proceeding, the agency shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to have such effect so long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

health, safety and welfare.

Sec. 6. This act shall be supplementary to existing administrative and regulatory procedures provided by law and in any action maintained under this act, the court may remand the parties to such procedures. Nothing in this section shall prevent the granting of interim equitable relief where required and for so long as is necessary to protect the rights recognized herein. Any person entitled to maintain an action under this act may intervene as a party in all such procedures. Nothing herein shall prevent the maintenance of an action, as provided in this act, to protect the rights recognized herein, where existing administrative and regulatory procedures are found by the court to be inadequate for the protection of the rights. At the initiation of any person entitled to maintain an action under this act, such procedures shall be reviewable in a court of competent jurisdiction to the extent necessary to protect the rights recognized herein. In any judicial review the court shall be bound by the provisions, standards and procedures of this act and may order that additional evidence be taken with respect to the environmental issues involved.

2480 '69 - Sub. (1)

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

STATE OF MICHIGAN

75TH LEGISLATURE

REGULAR SESSION OF 1970

Introduced by Rep. Thomas J. Anderson
Reps. Loren D. Anderson, Ballenger, Bennett, Brennan, Buth, Cawthorne, Copeland, De Stigter, Edwards, Mrs. Elliott, Faxon, Fitzgerald, Geerlings, Goemaere, Groat, Guastello, Holbrook, Hood, Mrs. Hunsinger, Jowett, Kehres, Kildee, Kok, Kramer, Law, Mahalak, Mahoney, Mrs. McCollough, McNeely, George F. Montgomery, Mrozowski, Novak, Ogonowski, O'Neill, Pears, Petitpren, Pilch, Pittenger, Sackett, Sheridan, Smit, James F. Smith, Roy Smith, Snyder, Stempien, Stopczynski, Strange, Suski, Mrs. Symons, Tierney, Vaughn, Weber, Wierzbicki and Stanley J. Davis named as co-sponsors

ENROLLED HOUSE BILL No. 3055

AN ACT to provide for actions for declaratory and equitable relief for protection of the air, water and other natural resources and the public trust therein; to prescribe the rights, duties and functions of the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity; and to provide for judicial proceedings relative thereto.

The People of the State of Michigan enact:

Sec. 1. This act, shall be known and may be cited as the "Thomas J. Anderson, Gordon Rockwell environmental protection act of 1970".

Sec. 2. (1) The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction.

(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the state or a political subdivision thereof, the court may:

(a) Determine the validity, applicability and reasonableness of the standard.

(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Sec. 2a. If the court has reasonable ground to doubt the solvency of the plaintiff

(57)

or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this act the court may order the plaintiff to post a surety bond or cash not to exceed $500.00.

Sec. 3. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts shall apply to actions brought under this act.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.

(3) Costs may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction.

(2) If administrative, licensing or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. In so remitting the court may grant temporary equitable relief where necessary for the protection of the air, water and other natural resources or the public trust therein from pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

(3) Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this act.

(4) Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, notwithstanding the provisions to the contrary of Act No. 306 of the Public Acts of 1969, pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Sec. 5. (1) Whenever administrative, licensing or other proceedings, and judicial review thereof are available by law, the agency or the court may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, water or other natural resources or the public trust therein.

(2) In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

Sec. 6. This act shall be supplementary to existing administrative and regulatory procedures provided by law.

Sec. 7. This act shall take effect October 1, 1970.

This act is ordered to take immediate effect.

Thos. Thatcher
Clerk of the House of Representatives.

Beryl L. Kenyon
Secretary of the Senate.

Approved July 27, 1970 3:14 P.M.

William G. Milliken
Governor.

To Sam Anderson - with
regrets and personal appreciation
for a magnificent job.
William G. Milliken

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

RECEIVED by MSC 1/23/2026 2:52:26 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

In re APPLICATION OF ENBRIDGE ENERGY TO REPLACE & RELOCATE LINE 5

BAY MILLS INDIAN COMMUNITY, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, NOTTAWASEPPI HURON BAND OF THE POTAWATOMI, ENVIRONMENTAL LAW & POLICY CENTER, and MICHIGAN CLIMATE ACTION NETWORK,

Appellants,

v.

MICHIGAN PUBLIC SERVICE COMISSION, et al.,

Appellees.

MSC No. 168335

COA Nos. 369156, 369159, 369161, 369162, 369165 (consolidated)

MPSC Case No. U-20763

REPLY BRIEF OF APPELLANTS

Attachment 2

April 2, 1970 Letter from Joseph L. Sax to Peter W. Steketee

(Pages 594-595 of the Appendix, Volume 2, of Appellant For Love of Water submitted on November 14, 2025 in the Companion Appeal before this Court, MSC No 168346)

RECEIVED by MSC 1/23/2026 2:52:26 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

In re APPLICATION OF ENBRIDGE ENERGY TO REPLACE & RELOCATE LINE 5

FOR LOVE OF WATER,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee.
_____/

Supreme Court No. 168346

Court of Appeals No. 369163

MPSC Case No. U-20763

APPENDIX TO APPELLANT FOR LOVE OF WATER'S BRIEF ON APPEAL
VOLUME 2

James M. Olson (P18485)
Rebecca L. Millican (P80869)
Scott W. Howard (P52028)
OLSON & HOWARD, P.C.
520 S. Union Street
Traverse City, MI 49684
olson@envlaw.com
rebecca@envlaw.com
scott@envlaw.com

Kacey Cook (P85672)
FOR LOVE OF WATER
223 Lake Avenue, Suite B
Traverse City, MI 49684
kacey@flowwateradvocates.org

Riyaz A. Kanji (P60296)
Lucy W. Braun (P55357)
Christopher C. Miller (P85763)
Grace R. Judge (*pro hac vice forthcoming*)
KANJI & KATZEN, P.L.L.C.
P.O. Box 3971
Ann Arbor, MI 48106
rkanji@kanjikatzen.com
lbraun@kanjikatzen.com
cmiller@kanjikatzen.com
gjudge@kanjikatzen.com

Counsel for Appellant For Love of Water

RECEIVED by MSC 1/14/2026 9:01:52 PM

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM

NUMBER	DOCUMENT	PAGES
	VOLUME 2	
Legislative History – Michigan Environmental Protection Act		
10	Introduced House Bill No. 3055 (April 1, 1969)	568-572
11	Substitute House Bill No. 3055 (March 25, 1970)	573-578
12	Letter from Joseph H. Thibodeau to Hon. Thomas J. Anderson and Hon. Warren N. Goemaere, Co-Chairs, Comm. on Conservation and Recreation (March 18, 1970)	579-593
13	Letter from Joseph L. Sax to Peter W. Steketee (April 2, 1970)	594-595
14	Prof. William J. Pierce, Prof. Joseph L. Sax, William A. Irwin, Responses to "Thoughts on H.B. 3055" at 24, Univ. of Mich. Law Sch. (March 20, 1970)	596-623
15	Enrolled House Bill No. 3055 (July 27, 1970)	624-626
16	Interview by Paul Sabatier with Joseph Sax (May/June 1972)	627-642

Dated: November 14, 2025

Respectfully submitted,

James M. Olson (P18485)
Rebecca L. Millican (P80869)
Scott W. Howard (P52028)
OLSON & HOWARD, P.C.
520 S. Union Street
Traverse City, MI 49684
(231) 946-0044
olson@envlaw.com
rebecca@envlaw.com
scott@envlaw.com

/s/ Riyaz A. Kanji
Riyaz A. Kanji (P60296)
Lucy W. Braun (P55357)
Christopher C. Miller (P85763)
Grace R. Judge (*pro hac vice forthcoming*)
KANJI & KATZEN, P.L.L.C.
P.O. Box 3971
Ann Arbor, MI 48106
(734) 769-5400
rkanji@kanjikatzen.com

Kacey Cook (P85672)
FOR LOVE OF WATER
223 Lake Avenue, Suite B
Traverse City, MI 49684
(231) 944-1568
kacey@flowwateradvocates.org

lbraun@kanjikatzen.com
cmiller@kanjikatzen.com
gjudge@kanjikatzen.com

Counsel for Appellant For Love of Water

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2026 9:01:52 PM

April 2, 1970

Mr. Peter W. Steketee
1058 San Lucia Drive, S.E.
Grand Rapids, Michigan 49506

Dear Peter:

I have now had a chance to examine the substitute House Bill 3055 reported out by the committee on March 25. I am pleased that the bill retains all its basic provisions and continues to be strong. However, I do think it needs some cleaning up and some clarification. I am planning to meet this weekend with Joe Thibodeau to discuss further amendments, and I am sending you a copy of the changes I would suggest. You will note that most of them are designed to clarify or to remove awkward and duplicative language. However, I want to call to your attention specifically what I view as significant substantive clarification.

1. I have talked about the public trust and/or air, water and other natural resources, rather than the public trust in the air, water and other natural resources. When the bill describes the scope of protection it uses the word and; when it describes the relief that may be granted it uses the word or, so that the court may act to protect the public trust or air, water and other natural resources.

2. I have taken out the phrase "considering all relevant surrounding circumstances and factors" because it seems to me unnecessary legalistic language and might conceivably be used to weaken the bill.

3. I have taken out the last sentence of Section 3 (1) because I think the effect that section has on the burden of proof speaks for itself. I have already discussed this with Joe Thibodeau and I think he agrees with me.

. . . . .

RECEIVED by MSC 11/14/2025 9:01:52 PM

4. On page 3 of the bill I have changed the language in order to avoid the notion that there is a kind of dual test; that is a test both as to the adequacy of consideration as a procedural matter and whether the decision is supportable on the evidence. In its place I suggest that the bill simply raise the question whether the rights set out in the bill "have been protected." In this regard I strike out the first phrase of section 4 (3) so as to make clear that the court shall look at the question of whether the interests recognized by the bill have been protected notwithstanding the agency's action. I have also added at the end of section 4 (3) a sentence to make clear at this point in the bill that the court is authorized to take additional evidence. You will recall that this already appears in the bill in section 6, but it should also be set out here in section 4 (3).

5. In section 5 (2) I think it is quite important to add the phrase "and in any judicial review thereof made available by law" for the following reason. In some instances no lawsuit will have been filed under this Act at the outset. Administrative procedures will simply have gone forward and the question may first reach judicial attention upon an appeal for judicial review under the existing structure of the Administrative Procedure Act or other state laws. It is essential to assure that if the case comes up in this context the reviewing court shall apply standards of this Act. Otherwise we may have different standards for judicial review--as to the interests recognized in H.B. 3055--depending on the manner in which the case first reaches a court. I consider this change most important and I am sure everyone will agree that it needs to be made in order to guarantee consistency.

6. In section 6 I have struck out two sentences because they seem to me to be unnecessarily duplicative of provisions in preceding sections of the Act. And finally, I have changed the language in the last sentence of section 6 to conform it with the earlier language of the bill and to avoid bringing in a new phrase--"the environmental issues involved" which has not appeared previously.

I will be in touch with you next week after I have talked with Joe Thibodeau about these suggestions.

I am sending copies of this letter to Representatives Anderson and Goemaere and Bill Pierce at the Law School in Ann Arbor.

Cordially yours,

Joseph L. Sax

c.c. to: Representative Thomas J. Anderson
Representative Warren N. Goemaere
Professor William Pierce

Enclosure
JLS:ryla

RECEIVED by MSC 1/23/2026 2:52:26 PM
RECEIVED by MSC 1/14/2025 9:01:52 PM