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Time to Reform the Process for Work Project Approval

In a Nutshell

- On December 10, the House Appropriations Committee set off a shockwave by disapproving \$645 million in work project spending authority.
- An Attorney General opinion issued on January 7 concluded the provisions in state law that gave the committee its authority to unilaterally disapprove the work projects was unconstitutional, restoring the funding but also effectively stripping the state legislature of any direct oversight over the designation of work projects.
- Legislators on both sides of the aisle should be concerned about that loss of oversight, and the legislature should immediately begin considering law changes to address the situation as all sides await to hear from the courts on the issue.

In December, much of the Michigan Legislature’s attention turned to the typically obscure and often-ignored process of approving budget “work projects”. On December 10, the Republican-led House Appropriations Committee voted to use the authority provided to it in state statute to disapprove \$645 million in work project spending authority. Notably, many of the items disapproved had just been approved by both legislative chambers two months earlier on October 3 as part of Fiscal Year (FY)2025 supplemental appropriations included within the FY2026 budget bills. The action set off a shockwave with Democratic lawmakers criticizing the vote. It also left dozens of organizations for whom money had been allocated scrambling to determine when and if they were going to receive any of the funding they had just been promised.

At least for the moment, those fears were eased on January 7 when Attorney General (AG) Dana Nessel issued a legal opinion declaring the portion of state law that allows each of the legislative appropriations committees to unilaterally disapprove and cancel proposed work projects unconstitutional. Her opinion asserts that the House’s action as authorized by the state Management and Budget Act amounts to a “legislative committee veto” that violates the Michigan Constitution’s requirements for a separation of powers between the three branches of government as well as its requirement for a bicameral, two-chamber process in approving legislation. Importantly, case law in Michigan establishes that Attorney General opinions are binding on state government agencies unless a state court rules otherwise.

Predictably, the AG’s opinion and the restoration of work project commitments it brings is being celebrated by Democrats and roundly criticized by House Republicans. House Speaker Matt Hall has promised to challenge the ruling in court.

What has received little attention amidst the political arguments is where the AG opinion leaves us in terms of future work project designations. Regardless of your opinion on the specifics of the House’s

action, one thing remains clear: the AG opinion effectively strips away all direct legislative oversight over the designation of work projects, giving the State Budget Director unilateral authority to carry forward any current year appropriation with or without legislative support. And this lack of a legislative role in approving work project designations would appear to create another “separation of powers” issue that is at least as serious – if not worse – than the legislative committee veto issue at the core of the AG’s opinion.

In this brief, we provide some additional background on work projects, explain how the AG’s opinion changes the balance of power with regard to work project designations, and suggest routes the legislature could take to re-establish appropriate legislative oversight.

A Primer on Work Projects

Generally, budget acts contain spending authorization that is limited to a single, specific fiscal year. Public Act 22 of 2025 – the omnibus budget act enacted in October – contained both initial FY2026 appropriations for state government operations and a separate set of supplemental appropriations tied to FY2025. The act’s title (and the title of every budget bill) spells this out clearly, providing appropriations “...for the fiscal years ending September 30, 2025 and September 30, 2026”. At the close of each fiscal year, any unused appropriation authority lapses, and unspent money is transferred back to the fund from which it was originally appropriated.

It’s logical, however, that there would be times where the state would want to appropriate a lump sum of one-time authorization to accomplish a project or broader purpose that runs across multiple fiscal years – perhaps funding for long-term infrastructure improvements, for major information technology projects, or multi-year grants for specific programs.

In some cases, this is handled directly in budget acts. The legislature can add boilerplate language that specifies that appropriations can be carried forward for multiple years as long as that language is clear on the amount, the purpose, and the timeframe of the appropriation. These “statutory” work projects are common in almost every state budget. Still, there are times when the executive branch may wish to carry forward spending authority where this statutory authority was not initially granted in boilerplate.

Recognizing this, the state’s Management and Budget Act (MBA) provides an avenue for the state to designate additional multi-year work projects. The MBA allows the State Budget Director to designate all or a portion of single-year appropriations as continuing work projects within 45 days of the end of each state fiscal year. Work project appropriations carry forward for up to four additional fiscal years but expire once work on the specific project is completed.

Importantly, the MBA also recognizes the legislature’s role in reviewing and approving these extensions of appropriation authority. The State Budget Director is required to immediately notify the House and Senate Appropriations Committees and the non-partisan House and Senate Fiscal Agencies of these designations, and the individual appropriations committees have 30 days from the date of that notification to express disapproval of any of the designations. Critical to the AG opinion, the MBA provides that if either of the appropriations committees vote to disapprove a work project designation, it does not become effective.

It is this single committee veto power that the AG’s opinion targets as being unconstitutional. Admittedly, the idea of a single committee within one legislative chamber having the authority to effectively veto a work project designation has always seemed strange.

It is noteworthy that both the constitution and state law provide the House and Senate Appropriations Committees with unique powers. As noted in the AG opinion, the Michigan Constitution gives both committees the power to approve emergency Executive Order budget reductions proposed by the Governor to keep state appropriations aligned with available revenue. The committees also have the legal authority to approve transfers of appropriated funding between individual budget line items. The full House and Senate don't have a voting role in either of these processes.

Still, in both these cases, the two appropriations committees have a shared role in affirmatively approving proposed reductions and transfers. Neither has any unilateral power. Within the process of designating work projects, either appropriations committee can disapprove a designation.

Why would state law contain a provision that grants this much authority to a single legislative committee? It's especially notable that when the legislature undertook a major re-write of the Management and Budget Act in 1999, this single committee veto power within the process already existed and was retained after that review.

It's pretty evident that the legislature decided that it didn't want to require full chamber floor votes – or even full appropriations committee votes – to approve work project designations. Since they were likely seen at the time as mundane budget issues, the legislature decided to short-circuit the need for affirmative approvals and instead allow each chamber's budget specialists – the appropriations committees – to throw up red flags in the then-rare instances where a designation was deemed unacceptable.

Impact of the AG Opinion

In that sense, the AG's opinion now appears to find this short-circuited process to be an unconstitutional delegation of the legislature's authority to evaluate and approve work projects to its two appropriations committees in the form a single committee veto power over such designations. In a way, the House Appropriations Committee's unilateral "veto" is effectively the short-circuited substitute for what would otherwise have been an affirmative vote by the House Appropriations Committee (or perhaps the full House) on a work project package that excluded the disapproved work projects had the legislature back in 1999 decided to require regular affirmative votes from the legislature to approve work projects.

As noted, House Speaker Matt Hall has vowed to challenge the AG opinion's conclusions in the courts, but the outcome of any litigation is not likely to be known anytime soon. Until the case is resolved, only one thing is certain: for now, the legislature's role in evaluating non-statutory work project designations is gone. And that should be disconcerting to lawmakers on both sides of the aisle.

Work project designations may not be controversial very often, but the legislature should still seek to protect its voice in the process. It's hard not to see the current legal status of work project oversight following the AG opinion as creating a new "separation of powers" conflict by cutting the legislature out of that role. And as mundane as work projects may be, the lack of legislative oversight creates the potential for executive branch overreach.

Let's examine one extreme (and hopefully unlikely) example. Assume that a sitting Governor faces the prospect of facing legislative majorities of the opposite party in the next legislative session. Those new majorities are likely to have their own set of budget priorities to advance in state budget deliberations. Without any legislative role in work project approvals, the then-governor could conceivably declare every individual appropriation in the budget a work project, preventing their lapses

and taking hundreds of millions of dollars off the table in the next round of budget deliberations. The same governor could also use work projects to at least temporarily retain access to any unspent funds already appropriated for a program not supported by the new legislative majorities.

The critical point here is that work project designations are not simply a perfunctory administrative action taken by the executive branch. They represent new appropriation authorization that extends the life of what is otherwise a single-year appropriation that, under law, needs to lapse at the close of the relevant fiscal year. The legislature needs to have a role in approving or disapproving the executive branch's proposals in the same way it has the critical responsibility for reviewing the Governor's full budget proposals each year.

In the end, the courts could conceivably disagree with the Attorney General and restore the legislature's short-circuited approval process – recognizing it for what it is. But it's also quite possible that the courts will take another route – agreeing with the AG's opinion that the short-circuited approval process is unconstitutional but also recognizing that the lack of legislative oversight without that short-circuited process results in another conflict with the constitution's separation of powers requirements. In that case, the courts could throw out all the Management and Budget Act's provisions that provide for non-statutory work projects, leading to even greater problems.

To restore its appropriate oversight role as it awaits court action, the Michigan Legislature should consult with its legal advisors and immediately begin to consider amendments to the Management and Budget Act to remedy the current short-circuited single committee disapproval process that has now been deemed unconstitutional by the Attorney General. Simply requiring affirmative votes of both appropriations committees each year of acceptable project designations would seem to put the approval process on firmer constitutional ground and, most importantly, preserve the legislature's voice in the process.

ABOUT THE AUTHOR

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