

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

THE MICHIGAN HOUSE OF
REPRESENTATIVES,

Case No. 26-000007-MB

Plaintiff,

Hon. Michael F. Gadola

v.

DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET, et al.,

ORAL ARGUMENT REQUESTED

Defendants.

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**Plaintiff Michigan House of Representatives' January 9, 2026 Motion for a
Temporary Restraining Order and Order to Show Cause Why a
Preliminary Injunction Should Not Issue**

The Michigan Attorney General has issued an opinion authorizing the Executive Branch to illegally spend unappropriated State funds. Under MCR 3.310, Plaintiff Michigan House of Representatives moves for entry of a temporary restraining order and an order to show cause why a preliminary injunction should not issue. The requisites for a temporary restraining order and preliminary injunction under Michigan law are satisfied. See MCR 3.310(B); *Mich State Employee Ass'n v Dep't of Mental Health*, 421 Mich 152 (1984). In further support of its motion, the House relies on the facts and authorities in the accompanying brief.

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Immediately prior to the filing of this Motion, counsel for Plaintiff contacted representatives from the Attorney General's office; the Acting Chief Legal Counsel to Governor Whitmer, Alexis Blane; and representatives for the Bureau of State Lottery, Michigan Gaming Control Board, and MEDC, informing them that the House of Representatives would be filing a Verified Complaint and this Motion for Temporary Restraining Order and providing them an unstamped drafts of both. A copy of Plaintiff's email correspondence with representatives of the Defendants is attached as Exhibit 2.

WHEREFORE, the House requests that the Court grant this motion and enter the order attached as Exhibit 1, temporarily restraining Defendants and their agents from encumbering, expending, or otherwise utilizing funds for which the House Appropriations Committee rejected work project requests until further order of the Court for 14 days or until further order of the Court and requiring Defendant to show cause why a preliminary injunction should not issue.

Respectfully submitted,

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Dated: January 9, 2026

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**Brief in Support of the House of Representatives' January 9, 2026 Motion for a
Temporary Restraining Order and Order to Show Cause Why a
Preliminary Injunction Should Not Issue**

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INTRODUCTION

This case presents a constitutional emergency precipitated by the Michigan Attorney General's authorization of the Executive Branch to seize the legislative power of the purse. At stake is nearly \$645 million in public funds that, by operation of statute, have lapsed to the State's General Fund. Yet, relying on a solitary Attorney General opinion issued roughly 48 hours ago, Defendants have declared their intent to override the Management and Budget Act, and race to encumber these funds before this Court can even consider the Act's legality.

The facts demanding immediate relief are stark. On December 10, 2025, the House Appropriations Committee exercised its authority under MCL 18.1451a(3) to disapprove \$644.9 million in proposed "work project" designations. Under the statute's clear text, that disapproval meant the designations were "not effective," and the funds legally lapsed, so they automatically return to the State's General Fund for future appropriation. Two days ago, without consulting the Legislature, the Attorney General opined that MCL 18.1451a(3) is unconstitutional. Less than 45 minutes later—before the ink was dry and before the Legislature could seek judicial recourse—the State Budget Office "activated" the spending codes for these disputed funds, authorizing departments to begin spending immediately.

Time is of the essence. The State Budget Office's "activation" is the electronic equivalent of unlocking the vault. Departments are now free to encumber and spend these funds immediately. There is no waiting period. There is no further administrative hurdle. Absent a temporary restraining order, the status quo will be shattered, and hundreds of millions of dollars could flow out of the Treasury before a preliminary injunction hearing can even be scheduled. The House seeks only to maintain the status quo until this Court can

resolve the threshold legal questions presented in this dispute of peak constitutional magnitude between the Legislative and Executive Branches of government.

STATEMENT OF FACTS¹

A. The statutory framework for appropriations and “work projects.”

The Michigan Constitution vests the “legislative power” in the House of Representatives and the Senate, a power that includes the authority to appropriate public funds. To manage this constitutional responsibility, the Legislature enacted the Management and Budget Act, MCL 18.1101, *et seq.* A central tenet of the Act is the temporal limitation on state spending: unless otherwise provided by law, “[a]t the close of the fiscal year, all appropriated funds that have not been expended or encumbered lapse to the fund from which they were appropriated.” MCL 18.1451(1).

The Legislature created a limited statutory exception to this automatic one-year sunset for “work project appropriation[s].” A work project allows funds to remain available for up to 48 months rather than lapsing at the end of the fiscal year. While the Legislature may designate work projects directly in an appropriations bill, the Act also provides a mechanism for the State Budget Director to propose such designations for existing line-items.

Under MCL 18.1451a(3), the Director may propose to the legislative appropriations committees that specific line-items be reclassified as work projects. However, this authority is conditional: the Director’s proposed designations “may be disapproved by either appropriations committee within 30 days after the date of notification.” MCL 18.1451a(3). If

¹ The Statement of Facts incorporates by reference the facts in the Verified Complaint, which reflect the same facts presented and relied upon in this Motion, and which is being filed contemporaneously herewith.

a committee disapproves a proposal within that window, the designation “shall not be effective.” *Id.*

B. The House Appropriations Committee disapproves \$644.9 million in proposed “work projects.”

On November 14, 2025, the State Budget Director sent a letter to the House and Senate Appropriations Committees proposing that \$2.7 billion in line-item appropriations for Fiscal Year 2025 be reclassified as work project appropriations. This proposal triggered the 30-day review period under MCL 18.1451a(3).

On December 10, 2025—within the statutory 30-day window—the House Appropriations Committee voted to disapprove \$644.9 million of the Director’s proposed work project designations. The disapproved items spanned numerous departments, including significant sums for the Department of Labor and Economic Opportunity (\$137.2 million), the Michigan Economic Development Corporation (\$104.1 million), and the Department of Technology, Management, and Budget (\$192.2 million). Under the statute’s plain language, the Committee’s disapproval rendered the Director’s proposal for these specific funds “not effective.” So, the unexpended balances of these line-items were required by law to lapse to the funds from which they were originally appropriated.

C. The Executive Branch unilaterally seizes the disapproved funds.

Following the Committee’s vote, State Senator Sarah Anthony called on Attorney General Dana Nessel to issue a formal opinion regarding the constitutionality of the

disapproval mechanism in MCL 18.1451a(3). Sen Anthony, Letter to Attorney Gen Nessel (Dec. 16, 2025).²

On January 7, 2026, the Attorney General issued Opinion No. 7328 (her first since October 2024). She opined that the provision allowing a legislative committee to disapprove a work project designation violates the Separation of Powers Clause and the Bicameralism and Presentment Clause of the Michigan Constitution. **Compl. Ex. E**, Atty Gen Op No 7328, issued Jan. 7, 2026.

The Executive Branch acted immediately to override the House’s appropriation authority. Less than 45 minutes after the Attorney General released her opinion, the Deputy Director of the State Budget Office issued a directive to all agency budget directors stating that the SBO “concur[s] with the opinion issued by the Attorney General.” **Compl. Ex. F**, 1/7/26 SBO Message. The message confirmed that the Executive Branch had already taken affirmative steps to seize the funds, noting that “[a]ppropriation codes for new non-statutory work projects included in the Nov. 14 letter have been activated to allow departments to begin spending in FY 2026.” *Id.*

Despite the clear statutory mandate that these funds lapse upon disapproval, Defendants have refused to transfer the \$644.9 million back to the state funds and are instead proceeding to disburse the People’s monies as if the Committee’s vote never occurred.

STANDARD OF DECISION

Under MCR 3.310(B)(1)(a), a court may issue a temporary restraining order when “it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate

² Available at <https://senatedems.com/anthony/wp-content/uploads/sites/21/2025/12/Anthony-Request-for-AG-Opinion-12.16.2025.pdf>

and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued.” See also *Red D Freight, Inc v Sexton*, No. 330834; 2017 WL 4818898, at *3-4 (Mich App Oct 14, 2017) (a TRO applicant only needs to satisfy MCR 3.310(B)(1)(a)’s “minimal requirements,” not the four-factor test for a preliminary injunction).

A preliminary injunction requires the Court to consider four factors: (1) the movant’s likelihood of success on the merits; (2) irreparable injury to the movant if the injunction is not issued; (3) a weighing of equities, i.e., whether the harm to the movant outweighs the harm to the opposing party; and (4) the harm to the public interest if the injunction is issued. *Mich State Emp Ass’n v Dep’t of Mental Health*, 421 Mich 152, 157-158 (1984).

ARGUMENT

I. This Court should enter a temporary restraining order to prevent the imminent and permanent loss of hundreds of millions of taxpayer dollars and the evisceration of House’s constitutional and statutory appropriations power.

In its Verified Complaint, the House has shown that Defendants have violated the Management and Budget Act, which requires Defendants to lapse unencumbered appropriations monies from the 2024-2025 fiscal year to the state fund from which they were appropriated. Moreover, there is no constitutional infirmity in the House Appropriations Committee’s rejection of the DTMB Director’s work-project requests that would undermine the House’s clear right to relief for Defendants’ contravention of MCL 18.1451(1) and MCL 18.1451a(3).

II. The House has also shown its entitlement to a preliminary injunction against Defendants’ encumbrances or expenditures of the appropriations monies at issue.

A. The House will succeed on its claim to require Defendant to lapse unencumbered and unexpended appropriations from the prior fiscal year to the state fund.

As explained in the Verified Complaint, Defendants have flouted the Management and Budget Act in attempting to withhold and encumber funds that must be lapsed back to the state fund for the Legislature’s future use in furtherance of state interests.

The legislative power of this State is vested in a senate and a house of representatives, see Const 1963, art 4, § 1, and it includes the power to appropriate public funds, *id.*, art 4, § 31. Indeed, the Constitution requires that the Legislature give primary consideration to passing “general appropriation bills for the succeeding fiscal period covering items set forth in the budget.” *Id.*

Consistent with that legislative authority and mandate, the Legislature enacted the Management and Budget Act, MCL 18.1101, *et seq.*, to govern the appropriations process and establish general rules for appropriated funds. Under the Act, “the legislature shall pass and present general appropriation bills for the upcoming fiscal year to the governor on or before July 1.” MCL 18.1365. And because it is dangerous to the public fisc and to governmental integrity for appropriations to have open-ended spending time lines, the Act establishes temporal limitations on all appropriations: unless otherwise provided by law, “[a]t the close of the fiscal year, all appropriated funds that have not been expended or encumbered lapse to the fund from which they were appropriated.” MCL 18.1451(1).

One exception to the general one-year sunset of appropriations is found in MCL 18.1451a, which created a special kind of appropriation called “work project

appropriation.” If an appropriation is designated as a “work project appropriation,” the funds “continue[] to be available until completion of the work or 48 months after the last day of the fiscal year in which the appropriation was originally made, whichever comes first, then the remaining balance lapses to the state fund from which it was appropriated.” MCL 18.1451a(1).

A work-project appropriation can be established in one of two ways. First, the Legislature may designate it as such in its general appropriations bill. See MCL 18.1404(6). Second, for those line-items not designated by the Legislature as “work project appropriations” (and, thus, which are subject to the standard one-year sunset), the Director of the Department of Technology Management and Budget (or its designee, the State Budget Office) may propose to the Senate and House Appropriations Committees and the fiscal agencies that these otherwise standard appropriations be reclassified as “work project appropriations.” MCL 18.1451a(3). Under this limited procedure, the Director’s proposed designations may be “disapproved by either appropriations committee within 30 days after the date of notification and, if disapproved within that time, shall not be effective.” MCL 18.1451a(3).

The appropriated funds at issue have not been properly designated as work project appropriations under the law, and so the unencumbered funds must lapse to the state fund.

As an initial matter, it is undisputed that the contested appropriations were *not* designated as work project appropriations by the Legislature through the typical appropriations process or any statutory mechanism. Neither the General Appropriations Bills, 2024 PA 120 and 2024 PA 121, nor the Supplemental Appropriations Bills, 2024 PA 135 and 2024 PA 148, designated these monies as work project appropriations, and no other legislation

so designated these funds either. So the presumption is the unspent funds return to the General Fund.

But the State Budget Director sent a letter to the House and Senate Appropriations Committees on November 14, 2025, specifically “recommend[ing]” that certain “line item appropriations . . . be designated as work projects under the provisions of Section 451a(3).” **Compl. Ex. A**, 11/14/25 Flood Letter. Thus, as Defendants must acknowledged, all the appropriations at issue are subject to MCL 18.1451a(3) as “non-statutory work projects.” and that the SBO’s “designations may be disapproved by either Appropriations Committee within 30 days after the date of notification and, if disapproved within that time period, shall not be effective.” *Id.*

It is also uncontested that the House Appropriations Committee “disapproved” these work project designations pursuant to its statutory authority under MCL 18.1451a(3). On December 10, 2025, the House Appropriations Committee “disapprove[d] the 2025 Work Project Requests” by a vote of 16-9. **Compl. Ex. B**, HAC Mtg Mins. By the plain terms of MCL 18.1451a(3), then, Defendants “propos[al]” to designate the \$644.9 million in appropriations as work projects was “not . . . effective.” And, as an added consequence, all of the subject appropriations retain their initial character as standard line-item appropriations, meaning “the unencumbered balance of each appropriation shall lapse to the state fund from which it was appropriated.” MCL 18.1451(1). Because the 2025 fiscal year has closed, Defendants are required under state law to lapse all unencumbered and unexpended monies from those appropriations to the state fund. *Id.* And they have not done so, despite the clear legal duty to do so. Therefore, the House is exceedingly likely to succeed on its claims related to the MCL 18.1451a(3) process.

B. MCL 18.1451a(3) and the House Appropriations Committee’s work project disapprovals stand on firm constitutional footing.

If the Attorney General’s Opinion, with which SBO has “concur[red],” is any indication, Defendants will not dispute that the House Appropriations Committee’s actions were statutorily authorized and that, at least under the terms of the statute, the funds at issue are not “work project appropriations” that can continue to be spent beyond FY 2025. They will instead argue that the statutory authority for the House Appropriation Committee’s actions, which has been on the books for decades, is itself unconstitutional.

Defendants face an uphill battle. “Statutes are presumed to be constitutional,” *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 308 (2011), and the “heavy burden” of proving otherwise falls on the challenging party, *In re Forfeiture of 2000 GMC Denali & Contents*, 316 Mich App 562, 569 (2016). Defendants cannot overcome that heavy burden here because the Committee’s actions violate neither the separation of powers nor the bicameralism and presentment requirements.

1. The House Appropriations Committee’s work project rejections do not violate Michigan’s separation-of-powers doctrine.

a. The Michigan Constitution creates three branches of government and vests specific powers in each. Const 1963, art 3, § 2. Relevant here, “the executive power is vested in the governor,” *id.*, art 5, § 1, and “the legislative power of the State of Michigan is vested in a senate and a house of representatives,” *id.*, art 4, § 1. And the Constitution expressly assigns specific legislative powers and authority to the Legislature. See, e.g., Const 1963, art 9, § 1; *id.*, art 9, § 17; *id.*, art 4, § 17. Importantly, however, Michigan’s legislative authority is not “one of delegated powers,” so that “legislative power, under the Constitution of the state, is as broad, comprehensive, absolute, and unlimited as that of the Parliament of England, subject only to

the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the state itself.” *Young v City of Ann Arbor*, 267 Mich 241, 243 (1934).

In assigning various governmental powers to each branch, the Michigan Constitution creates a system of separated powers. Under that system, “No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Const 1963, art 3, § 2. That said, “the separation of powers doctrine does not require so strict a separation as to provide no overlap of responsibilities and powers,” and “[a]n overlap or sharing of power may be permissible if the grant of authority to one branch is limited and specific and does not create encroachment or aggrandizement of one branch at the expense of the other.” *Taxpayers of Mich Against Casinos v State of Mich*, 478 Mich 99, 105 (2007) (“*Taxpayers II*”) (citations omitted). In other words, the Separation of Powers requires only that the same hands that hold the “*whole power*” of one department cannot exercise the “*whole power*” of another. *Soap & Detergent Ass’n v Natural Res Comm*, 415 Mich 728, 752 (1982), quoting *The Federalist No. 47* (J. Madison).

The Constitution explicitly assigns certain tasks to the Legislature, rendering them core exercises of legislative action. For example, the Constitution assigns the power of the purse to the Legislature, putting it in charge of both raising taxes and appropriating expenditures. Const 1963, art 9, §§ 1, 17. The core legislative power to appropriate funds includes the power to determine not only the purpose for which the funds are spent, but the period in which they are spent. This much is evident from Const 1963, art 4, § 31, which authorizes the Legislature to pass “general appropriation bills for the succeeding fiscal period.” Const 1963, art 4, § 31. In exercise of that constitutional authority, the Legislature has established that the default

“fiscal period” for any appropriation is one “fiscal year,” after which “the unencumbered balance of each appropriation shall lapse to the state fund from which it was appropriated.” MCL 18.1451(1). Because the Constitution vests the Legislature with the specific authority to determine the “fiscal period” of an appropriation, *see* Const 1963, art 4, § 31, the determination of whether an appropriation lasts for one year or more is a legislative function.

Beyond this general one-year expiration period, the “work projects” creates a specific and limited exception to the one-year expiration. Under this exception, the Legislature can designate that a particular appropriation is a work project in an appropriations bill, rendering those funds available to the Executive Branch for a period of up to four years. See MCL 18.1404(6). Separately, in MCL 18.1451a(3), the Legislature has created an additional, cooperative sharing of power with the Executive Branch to ensure fiscal efficiency. Under this provision, the DTMB Director (or his agent) may “propose[.]” that certain prior “appropriations” that lasted only for one year be “designated as work projects in accordance with the definition contained” in this statutory section. MCL 18.1451a(3). But, rather than wholly abdicating its legislative authority to determine the amount, manner, and expiration of appropriations, the Legislature withheld for itself a cooperative seat at the table in this process. Any such “proposed . . . designations” for work projects “may be disapproved by either [the Senate or House] appropriations committee within 30 days after the date of notification and, if disapproved within that time, shall not be effective.” *Id.*

b. The cooperative framework established in MCL 18.1451a(3) does not violate the separation of powers, as it neither delegates significant legislative authority to another branch nor arrogates another branch’s power to the Legislature. Michigan courts have long recognized that our branches of government, while separated, are not “rigid, watertight compartment[s].”

Makowski v Governor, 495 Mich 465, 482 (2014). Instead, the Constitution contemplates that “there will be some overlap between the functions of the three branches of government.” *Id.* The dispositive question in a separation-of-powers analysis is not whether one branch has touched upon the functions of another, but whether the “whole power of one department is exercised by the same hands which possess the whole power of another department.” *Taxpayers II*, 478 Mich at 105, quoting *Soap & Detergent Ass’n*, 415 Mich at 752.

MCL 18.1451a(3) survives this “whole power” test. Through this statute, the Legislature has delegated a limited and specific portion of its appropriations power to the State Budget Director: the power to *propose* that a line-item be designated as a work project. This delegation allows the Executive Branch to identify funds that require a longer expenditure horizon, leveraging the Executive’s proximity to the daily operations of government. However, the Legislature has not handed over the “whole power” of determining the duration of appropriations; to do so would itself be unconstitutional. By retaining the right to disapprove these proposals via the Appropriations Committees, the Legislature ensures that the ultimate authority over the state’s purse strings remains with the branch constitutionally charged with holding them.

This arrangement is the very definition of a permissible sharing of power. The Supreme Court has held that an “overlap or sharing of power may be permissible if the grant of authority to one branch is limited and specific and does not create encroachment or aggrandizement of one branch at the expense of the other.” *Judicial Attorneys Ass’n v State*, 459 Mich 291, 297 (1998). Here, the grant of authority to the Executive Branch is both limited—it applies only to existing line-item appropriations that *must* meet specific criteria—and specific—it is confined to the designation of work projects under MCL 18.1451a.

Furthermore, there is no “aggrandizement” of the Legislative branch at the expense of the Executive. As noted in the House’s Complaint, the Executive has no inherent constitutional right to appropriate funds or to extend the life of an appropriation beyond the fiscal year enacted by the Legislature. Consequently, when an Appropriations Committee disapproves a work-project designation, it is not taking away a power that belongs to the Executive; it is simply declining to grant an *exception* to the standard one-year lapse rule that applies to all appropriations.

c. Defendants’ contrary position, as reflected in the Attorney General’s Opinion, rests on a fundamental misunderstanding of which branch holds the power to determine the duration of an appropriation. The Attorney General observes that “the Legislature’s appropriation power ends at the point of enactment, leaving only the executive branch with the power to implement and expend appropriated funds.” **Compl. Ex. E**, Atty Gen Op No 7328 at 10-11. But the executive power to “implement and expend appropriated funds” does not include the authority to modify the core terms of an appropriation and extend it beyond its expiration date. As discussed above, that power rests with the Legislature alone.

To accept the Defendants’ contrary position—that the Legislature must grant the Executive the unilateral power to extend appropriations without a legislative check—would be to turn the separation of powers doctrine on its head. In the Attorney General’s world, the doctrine requires the Legislature to abdicate its core constitutional function of defining the limits of state spending, in a manner that deeply “frustrate[s] the Legislature’s intent.” *Int’l Union, United Auto, Aerospace & Agricultural Implement Workers of Am, UAW Local 6000 v Michigan*, 194 Mich App 489, 501 (1992). Michigan law does not require such an abandonment. Because MCL 18.1451a(3) disperses power between the branches rather than concentrating the “whole

power” in one, it is a constitutional exercise of the Legislature’s authority to manage state funds.

For similar reasons, the Attorney General is wrong that “MCL 18.1451a(3) allows the House Appropriations Committee to unilaterally *discontinue* \$645 million in funding.” **Compl. Ex. E**, Atty Gen Op No 7328 at 11-12 (emphasis added). The House Appropriations Committee’s decision to reject the work projects requests in no way *discontinued* any ongoing funding; as a matter of law, those appropriations *expired* at the end of the fiscal year, and any remaining unencumbered funds lapsed to the state fund at that time. MCL 18.1451(1). The Executive Branch cannot extend the time to spend lapsed funds unilaterally. That’s the very violation of the separation of powers that Attorney General claims to avoid.

2. The House Appropriations Committee acting on behalf of the Legislature does not violate the Michigan Constitution’s bicameralism and presentment requirements.

a. The Michigan Constitution establishes specific requirements for legislative action. First, “[n]o bill shall become law without the concurrence of a majority of the members elected to and serving in each house.” Const 1963, art 4 § 26. And any such bill that receives concurrence from a majority of members of each house must then “be presented to the governor before it becomes law.” Const 1963, art 4, § 33. These are known as the bicameralism/enactment and presentment requirements. See *Blank v Dep’t of Corr*, 462 Mich 103, 112 (2000). Importantly, these requirements only apply when the Legislature engages in “an act of legislation,” not when exercising some other authority. *Taxpayers of Mich Against Casinos v State of Mich*, 471 Mich 306, 330 (2004) (“*Taxpayers I*”). Thus, a core consideration in determining whether the bicameralism and presentment requirements apply is whether the Legislature’s action is legislation qua legislation.

The Michigan Supreme Court addressed the framework for deciding whether a legislative act is an act of legislation in *Blank*. There, the Court addressed the constitutionality of APA provisions that required administrative agencies to obtain approval from the Joint Committee on Administrative Rules (“JCAR”) before new administrative rules could be adopted. *Blank*, 462 Mich at 108-110. Under these amendments, if JCAR disapproved the proposed rule or certified an impasse, the rule would be returned to the agency and could not be adopted unless the Legislature approved it by concurrent resolution within sixty days or JCAR later renewed consideration and approved it. *Id.* at 109. Following the Department of Corrections’ decision to adopt certain proposed rules without JCAR approval, a lawsuit made its way to the Michigan Supreme Court, which addressed the constitutionality of “whether the Legislature, upon delegating [authority to Executive Branch agencies to adopt rules and regulations consistent with the purpose of the statute], may retain the right to approve or disapprove rules proposed by executive branch agencies.” *Id.* at 110-113. In answering that question, the Court relied extensively on the U.S. Supreme Court’s decision in *Immigration & Naturalization Service v Chadha*, 462 US 919 (1983), to determine whether JCAR’s action was “legislative in nature” thereby requirement bicameralism and presentment. *Blank*, 462 Mich at 114. Applying *Chadha*, the Court assessed three “observations” that determined whether a legislative veto is “inherently legislative in nature”:

- (1) “the action had the purpose and effect of altering . . . legal rights, duties and relations of persons . . . outside the legislative branch”;
- (2) “the action supplanted legislative action” because “[t]he only way the House could have obtained the same result would have been by enacting legislation”;
and
- (3) “the House’s action involved determinations of policy.”

Blank, 462 Mich at 114 (ellipses in original).

Applying those factors to the legislative veto, the Court concluded that it amounted to legislative action. On the first factor, the Court noted that “if JCAR or the Legislature can block the implementation of DOC rules, it has the power to alter the rights, duties, and relations of parties outside the legislative branch,” because the Legislature had already “assigned to the director of the DOC the duty to supervise and control the DOC, including “the authority to promulgate rules for ‘the management and control of state penal institutions.’” *Id.* at 116, quoting MCL 791.206. Therefore, “the authority of JCAR or the Legislature to block implementation of the rules would effectively interfere with the duty of the [DOC] director to administer the department,” an act clearly directed outside the legislative branch. *Id.* at 116.

On the second factor, the Court reasoned that the JCAR approval process was “inherently legislative in nature” because “[i]f JCAR lacked its statutory authority, then the only way that the Legislature could influence the promulgation of the rules would be to enact new legislation.” *Id.* at 117. Importantly, the Court noted that when the Legislature “reserves to itself the power to block agency rules from taking effect,” that “action exerts a ‘policy-making effect *equivalent to amending or repealing existing legislation.*’” *Id.* at 117 n 8, quoting *NJ Gen Assembly v Byrne*, 90 NJ 376, 388 (1982) (emphasis in original).

On the third factor, the Court essentially inferred that JCAR’s failure to approve the DOC rules involved policy determinations because it took testimony and received comments from various interested entities. *Id.* at 116-117.

Finally, the Court held that nothing in Michigan’s Constitution permitted a joint committee to engage in an act of legislation without following the constitutionally mandated

procedures for doing so, and so held that the JCAR review provisions in the APA were unconstitutional. *Id.* at 120; see also *id.* at 129-130 (Weaver, C.J. Concurring) (agreeing with the holding and result of the lead opinion regarding the unconstitutionality of the legislative veto of §§ 45 and 46 of the Administrative Procedures Act,” and the conclusion that “[t]he legislative veto violates the enactment and presentment provisions of the Michigan Constitution, and, therefore, violates the separation of powers.”).

The Michigan Supreme Court revisited *Blank* and its consideration of whether the Legislature’s conduct is *legislative* in nature in the *Taxpayers* case. There, the Court explained that the Michigan Constitution “only requires the approval of *legislation* by bill, but is silent regarding the approval of contracts.” *Taxpayers I*, 471 Mich at 328 (emphasis in original). The Court explained that the Legislature had a long history of the Legislature avoiding the bill process and instead utilizing the resolution process when it “did not engage in a legislative act that enacted a law,” such as when it “used the resolution process to ratify amendments of the federal constitution,” because that does not involve “engag[ing] in a legislative act that enacted a law, but merely expressed its assent to the proposed amendment.” *Id.* at 329. Consistent with that history and understanding, the Court explained that the Michigan Constitution only required the Legislature to go through Article 4, § 22’s bill process for “approval of *legislation*,” not for “the approval of contracts.” *Id.* at 328 (emphasis in original). Indeed, the Court concluded that *Blank*’s factors did not even apply to the question presented because *Blank* “involved the Legislature’s power to alter or amend the statute delegating rule-making authority without doing so by statute,” which involved “a significant state constitutional history,” whereas “our Constitution is silent regarding the proper form of legislative approval of tribal-state gaming compacts” at issue in *Taxpayers*. *Id.* at 329-330.

b. Here, the House Appropriations Committee’s actions in rejecting the work project requests under MCL 18.1451a(3) do not violate the bicameralism/enactment and presentment requirements of Michigan’s Constitution, under *Blank* or *Taxpayers*.

On the first factor, rejection of the work-project proposals does not “alter the rights, duties, and relations of parties outside the legislative branch.” *Id.* at 116. As noted, all of the appropriations for which the Director sought a work-project designation were already passed as standard appropriations—with a one-year deadline for expenditures—at which point any remaining funds lapse back to the state fund. MCL 18.1451(1). Thus, as a baseline matter, the status quo of the “rights, duties and relations of parties outside the legislative branch” are that all such funds must be expended within one year or lapse back to the State. *Blank*, 462 Mich at 116. By *rejecting* the Director’s request to extend the deadline to expend such funds before they lapse, the Committee did not alter, but rather maintained the status quo of the “rights, duties and relations of parties outside the legislative branch.” *Id.*

Nor do the Committee’s actions implicate the second factor: whether “the action supplanted legislative action.” *Id.* at 114. Again, the Committee’s decision to reject the Director’s work-project proposals maintains the existing nature of each appropriation as a one-year, lapsing expenditure that can only be renewed in a future appropriations bill. In other words, the Committee’s decision to reject the extension of these appropriations beyond the fiscal year is definitively *not* the sort of thing that “the House could have obtained” only “by enacting legislation.” *Id.* No legislation is necessary to obtain the Committee’s result; it merely continues the existing budget that has already passed through the bill/appropriations process, thereby complying with all bicameralism and presentment requirements. If anything, it is the

Director’s attempt to convert single-year appropriations into work project appropriations that would supplant legislative action.

And the third factor—whether “the House’s action involved determinations of policy,” *id.*—similarly supports the conclusion that the Committee’s actions were not “inherently legislative in nature.” *Id.* As explained, the Michigan Supreme Court’s analysis of this factor in *Blank* was quite perfunctory, noting only that it could “reasonably infer” that JCAR’s decision would involve “policy determinations” because it “conducted hearings on the proposed rules” and “took testimony and received comments from prisoner rights groups, prisoners’ relatives, and other interested parties.” *Id.* at 116. Here, on the other hand, the Committee did not engage in the sort of “deliberations . . . of the inevitable policy issues” that the Court relied upon in *Blank*. *Id.* at 116-117. The Committee neither conducted debate nor took testimony before voting to disapprove the work projects proposals. **Compl. Ex. B**, HAC Mtg. Mins. Indeed, a significant portion of the public criticism of the Committee’s action was that it was done with “zero discussion” and “no public comment or debate among appropriations members.” Small Bus Ass’n of Mich, *\$644.9 Million in Work Projects Rejected by House Panel* (Dec 16, 2025).³ In other words, to the extent process is indicative of policy considerations as the Court surmised in *Blank*, the Committee’s process in rejecting all these work-project requests without extensive testimony, discussion, and debate further supports the conclusion that it was not a policy decision to maintain the status quo ante one-year deadline for encumbrance and expenditure of these appropriations monies. Under *Blank*’s reasoning, the Committee’s work-project rejections were not a legislative act that required bicameralism and presentment.

³ Available at <https://www.sbam.org/644-9-million-in-work-projects-rejected-by-house-panel/>.

For largely the same reasons, the Committee’s actions in rejecting these work-project proposals is more analogous to the approval of the tribal-state gaming compacts in *Taxpayers I*, wherein the Court rejected *Blank*’s application entirely. In *Taxpayers I*, the Court explained that “*Blank* held that once the Legislature grants power to an agency by statutory action, it cannot then diminish or qualify that power except by further statutory action,” i.e., withholding for itself a “legislative veto.” 471 Mich at 330. Because the Constitution permitted only “temporary legislative vetoes of agency regulations between legislative sessions” and voters had already rejected a prior amendment proposal to allow permanent vetoes, the Court found significant opposition to the legislative veto at issue in *Blank*, but not so for the “tribal-state gaming compacts” context of *Taxpayers I. Id.*

Here, the Constitution is similarly silent on legislative rejection of Executive Branch *requests* to extend appropriations, and there has been no proposal voting on the issue. *Id.* Moreover, the Legislature has not “grant[ed] power to [the DTMB] by statutory action.” *Id.* Rather, the only legislative action here is the actual process embodied in MCL 18.1451a, which merely permits the DTMB to “propose[]” work-project designations, which proposals that same legislation directs exclusively to the House and Senate Appropriations Committees. Unlike in *Blank*, where the Legislature had already “delegated to DOC the authority to promulgate rules” and so could not subsequently “override[] the authority the Legislature has delegated,” 462 Mich at 115, the Committee’s actions pursuant to MCL 18.1451a(3) “d[o] not have the effect of amending or repealing existing legislation,” and instead merely reinforce the prior enacted appropriations legislation, *Taxpayers I*, 471 Mich at 331.

By way of analogy, the Committee’s rejection of these work-project proposals is no different than any other appropriations or budgetary proposal made by the Executive Branch

that fails to make it out of committee. This is, of course, commonplace for all manner of legislation, as policy decisions both big and small routinely “die[] in committee.” *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 64 (1987); see also *Connell Const Co v Plumbers & Steamfitters Loc Union No 100*, 421 US 616, 634 (1975) (“Like most bills introduced in Congress, it never reached a vote.”). In the same way that there is no constitutional infirmity in a single chamber’s committee rejecting an Executive Branch proposal, thereby prohibiting it from reaching the floor and becoming law, the House Appropriations Committee’s decision to reject the DTMB Director’s work-project proposals is no less valid.

c. The Attorney General’s contrary view misinterprets Supreme Court precedent and misunderstands the statutory scheme.

As an initial matter, the Attorney General is incorrect to characterize the Committee’s Section 18.1451a(3) authority as “permit[ting] a single legislative committee to unilaterally ‘disapprove’ of executive action.” **Compl. Ex. E**, Atty Gen Op No 7328 at 18-19. The Executive Branch has no constitutional authority to establish the terms of an appropriation, including the duration of an appropriation granted by the Legislature. Thus, there is no independent “executive action” the Committee vetoes. Rather, MCL 18.1451a(3) merely establishes a procedure whereby the DTMB Director or his agent may “propose[]” that certain appropriations be designated as work projects. This is not the sort of “statutory assignment and delegation” that the Court prohibited the Legislature from interfering with in *Blank*. 462 Mich at 116. There is simply no situation in which the Executive Branch may unilaterally transform a one-year appropriation to a multi-year work project.

This same misunderstanding also infects the Attorney General’s analysis of *Blank*’s second factor. It is completely backwards to claim that “absent the second sentence in

MCL 18.1451a(3), the Legislature (let alone a single committee of one house) would have no power or authority to disapprove work-project designations or otherwise make appropriations decisions outside of the legislative process.” **Compl. Ex. E**, Atty Gen Op No 7328 at 19. Absent the work project approval process, the *Executive Branch* has no lawful authority to extend any appropriation at all. Full stop. The Legislature has already established that the appropriations related to the contested monies lapse after one year, see 2024 PA 120; 2024 PA 121; 2024 PA 135; 2024 PA 148, and that is exactly how they remain following the Committee’s disapprovals. It is the Executive Branch that seeks to “influence the [appropriation of funds],” which would require “enact[ing] new legislation.” **Compl. Ex. E**, Atty Gen Op No 7328 at 19, quoting *Blank*, 462 Mich at 117. And in doing so, they completely “frustrate the Legislature’s intent,” *UAW*, 194 Mich App at 501, by unilaterally ignoring and extending the explicit, legislatively set deadline to encumber or expend appropriations.⁴

No better is the Attorney General’s conclusion regarding *Blank*’s third factor—that “the action of ‘disapproval’ is one of policymaking.” **Compl. Ex. E**, Atty Gen Op No 7328 at 19-20. Under the Attorney General’s understanding of policymaking, every denial of a request from the Executive Branch must come from a full lawmaking process, by which the entire Legislature waits at the Executive Branch’s beck and call to vote down a proposal the Governor or any Department suggests. This cannot be the correct understanding of the

⁴ It should be noted that a fairhanded application of the Attorney General’s opinion would implicate numerous other laws allowing longstanding cooperative efforts between the Legislature and Executive Branch in the appropriations context that do not involve formal passage of an appropriations bill. See, e.g., MCL 12.254; MCL 18.1393; MCL 18.1451a(2). For example, if adopted by the courts, the Attorney General’s reasoning essentially ends the practice of “[a]dministrative transfers of appropriations within any department,” which at present can occur without a full appropriations bill. MCL 18.1393(1).

Legislature’s authority and duty to the Executive Branch, as a co-equal branch of the State’s sovereign authority.

Finally, the Attorney General misreads *Blank*’s discussion of explicit and limited constitutional authority as a restriction on broad, unwritten Legislative authority. **Compl. Ex. E**, Atty Gen Op No 7328 at 20-26. In *Blank*, the Court inferred that because Article 4, § 37 narrowly permitted “the Legislature the independent authority to temporarily suspend the implementation of a rule promulgated by an administrative agency between regular legislative sessions,” that did not broadly support the power to permanently block a rule, 462 Mich at 119-120, particularly given that the voters had already rejected a proposed constitutional amendment that would have “expressly permit[ted] the Legislature, or a joint committee thereof, to approve or disapprove, in any manner provided by law, any rule proposed by an administrative agency,” *id.* at 131-132 (Markman, J., concurring). Thus, the Court held that because the Constitution explicitly granted the Legislature a limited, but affirmative power to temporarily suspend rules—within the Article of the Constitution specifically informing the authority of the “Legislative Branch”—they would not render that limited power surplusage by granting much broader, implicit authority to the Legislature. That is a marked difference from what the Attorney General attempts here. She reads from a Section of Article V—the Article elucidating the authority of the Executive Branch—a limited grant of authority to the Governor (with the caveat of retained oversight and approval by the Legislature) to *reduce* spending pursuant to an appropriation, Const 1963, art 5, § 20, as proof that the Legislature has no authority to reject the Executive Branch’s unilateral attempt to expand appropriation authority. That is exactly backwards, and goes well beyond the Court’s reasoning in *Blank*.

C. The House compellingly satisfies the immediate and irreparable harm requirement.

The House faces immediate and irreparable harm on two distinct but mutually reinforcing fronts. *First*, the Executive Branch’s unilateral seizure of the power of the purse constitutes a structural constitutional injury that is, by definition, irreparable. *See, e.g., Browning v Dept of Corr*, 345 Mich App 1, 33 (2022) (noting in the context of constitutional torts that the violation of the right itself acts as the injury).

Second, even viewing this strictly as a monetary dispute, the harm is irreparable because the funds, once spent, cannot be recovered. The Defendants have admittedly activated the spending codes for nearly \$645 million in disputed funds. While the general rule is that “mere payment of money is not considered irreparable,” that rule rests entirely on the assumption that “money can usually be recovered from the person to whom it is paid.” *Philip Morris USA Inc v Scott*, 561 US 1301, 1304 (2010) (Scalia, J., in chambers). When that assumption fails—when “expenditures cannot be recouped”—the “resulting loss may be irreparable.” *Id.*; *see also Nat’l Inst of Health v Am Pub Health Ass’n*, 145 S Ct 2658, 2659 (2025). Without a temporary restraining order, this Court risks presiding over a case where the subject matter—the funds themselves—has been dissipated before a final judgment can be rendered.

D. Injunctive relief would not cause unfair harm to Defendants.

The balance of equities tips decidedly in favor of the House. To obtain injunctive relief, the House need only show that the harm it would suffer without an injunction outweighs the harm a temporary restraint would inflict on the Defendants. *Mich State Emp Ass’n*, 421 Mich at 157-158. Here, the contrast is stark: the House faces the permanent, unrecoverable loss of

hundreds of millions of taxpayer dollars and the evisceration of its constitutional power of the purse; Defendants face, at most, a temporary administrative delay.

Defendants' assertion of harm relies entirely on the premise that they are entitled to seize these funds despite the House Appropriations Committee's express disapproval. But Defendants cannot claim a valid "harm" in being prevented from spending money they have no lawful authority to spend. As demonstrated above, under the plain text of the Management and Budget Act, the subject appropriations have lapsed. MCL 18.1451(1). Funds that have lapsed to the state fund are no longer available for Executive encumbrance. If the Defendants are eventually vindicated, they will suffer only a delay in the initiation of these projects. But if the House is correct—as the statute's plain text suggests—and no injunction issues, Defendants will have successfully raided the public fisc based on a unilateral and disputed reading of the law, rendering the Court's final judgment a hollow victory for the Legislature.

Moreover, the status quo is that these funds were set to expire at the close of the fiscal year. It is Defendants who seek to *alter* that status quo by effectively resurrecting expired appropriations through the contested work-project designations. A temporary restraining order merely preserves the corpus of these funds while this Court resolves the weighty constitutional questions presented. Defendants have no legitimate interest in racing to encumber disputed funds before the Judiciary can determine their legal status. Whatever administrative inconvenience Defendants might suffer from a pause in spending is trivial compared to the irreparable injury to the constitutional structure and the public treasury that would result from permitting the Executive to bypass the Legislature entirely.

E. The public interest favors an injunction.

In a dispute between the political branches over the power of the purse, the public interest is unequivocally on the side of the Legislature—the branch directly accountable to the people for the expenditure of their tax dollars.

What’s more, the public is “always interested in the proper enforcement of statutes.” *Federated Ins Co v Oakland Co Rd Comm’n*, 475 Mich 286, 291 n 4 (2006). The Management and Budget Act establishes a clear mechanism for the lapse of funds. Allowing the Executive to ignore the disapproval of the House Appropriations Committee—and thus ignore the statutory mechanism that triggers the lapse—undermines the rule of law. See also *Clifford v Cactus Drilling Corp*, 419 Mich 356, 368 (1984) (Williams, C.J., dissenting) (“[S]ociety has an interest in ensuring that its laws and important public policies are not contravened.”).

Finally, the public interest favors fiscal prudence. Defendants seek to rush the expenditure of nearly \$645 million in disputed funds. If this Court later determines those funds had legally lapsed, the State will have no practical way to “un-spend” that money, leading to a disorderly budget process and potential shortfalls in the General Fund. The public interest is best served by a preliminary injunction that pauses the expenditure of these vast sums until their legal status is confirmed, ensuring that taxpayer money is spent only pursuant to valid, undisputed law.

CONCLUSION

For these reasons, the Court should enter the temporary restraining order and order to show cause why a preliminary injunction should not issue attached as Exhibit 1.

Respectfully submitted,

KIENBAUM HARDY VIVIANO PELTON
& FORREST, P.L.C.

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Dated: January 9, 2026

EXHIBIT 1

STATE OF MICHIGAN
COURT OF CLAIMS

THE MICHIGAN HOUSE OF
REPRESENTATIVES,

Case No. 26-_____-__

Plaintiff,

Hon.

v.

DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET, et al.,

Defendants.

**TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY JUNCTION SHOULD NOT ISSUE**

At a session of said Court, held in the City of
Lansing, County of Ingham, State of Michigan,
on _____, 2025.

PRESENT: Hon. _____
Court of Claims Judge

Upon consideration of Plaintiff's January 9, 2026 Motion for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue, Brief in Support, and the Verified Complaint and other exhibits submitted therewith, and having considered the argument of counsel, the Court finds that the requisites for a temporary restraining order have been met because the following appears from Plaintiff's submissions:

1. On December 10, 2025, the House Appropriations Committee exercised its statutory authority under MCL 18.1451a(3) to disapprove \$644.9 million in proposed "work project" designations.

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2. Notwithstanding that disapproval, on January 7, 2026, Defendant State Budget Office “activated” the spending codes for these disputed funds, authorizing the other Defendant Departments and Agencies to begin encumbering or spending the funds immediately.

3. Plaintiff will suffer cognizable irreparable injury if the Defendants encumber, expend, or otherwise utilize the subject funds, in violation of MCL 18.1451a(3).

4. A temporary restraining order is necessary to preserve the status quo while the Court resolves legal questions regarding the constitutionality of MCL 18.1451a(3). Without a temporary restraining order, there is a significant and imminent likelihood that Plaintiff will be without a remedy if it prevails on the merits.

5. Defendants will not suffer harm by the entry of this temporary restraining order.

It is therefore ordered, adjudged, and decreed that:

1. A temporary restraining order is hereby entered against Defendants:

- A. Enjoining Defendants and their agents from encumbering, expending, or otherwise utilizing funds for which the House Appropriations Committee rejected work project requests until further order of the Court.
- B. Enjoining Defendants and their agents from directing any other person with access to the appropriations funds from encumbering, expending, or otherwise utilizing those funds until further order of the Court.

2. Defendants, their agents, and attorneys, and those persons in active concert or participation with Defendants are also ordered not to destroy, modify, discard, or hide any documents, information or electronic data related to this litigation, including paper or electronic files, data generated by or stored on their computer systems and stored media, or any other data in physical or electronic form.

3. This order is binding upon Defendants, “their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” MCR 3.310(C)(4).

This order shall remain in full force and effect for a period of fourteen (14) days or until further order of the Court.

It is hereby further ordered that:

1. Defendants will show cause before this Court on the ____ day of January, 2026, at _____, or as soon thereafter as counsel or the parties may be heard, as to why a preliminary injunction as requested by the House of Representatives should not be issued.

2. This temporary restraining order and order to show cause were issued on the ____ day of January, 2026, at _____.

3. Plaintiff shall file this temporary restraining order in the clerk’s office forthwith.

Court of Claims Judge

Dated: January ____, 2026

EXHIBIT 2

David Porter

From: Sean Dutton
Sent: Friday, January 9, 2026 1:02 PM
To: blanea@michigan.gov; BensonJ4@michigan.gov; BowenS7@michigan.gov; brownm55@michigan.gov; CorbinS@michigan.gov; EubanksR@michigan.gov; FloodJ3@michigan.gov; HertelE@michigan.gov; LangeM3@michigan.gov; MaleykoG@michigan.gov; NesselD34@michigan.gov; RoosP@michigan.gov; WashingtonM6@michigan.gov; WieferichB@michigan.gov; FroehlichJ2@michigan.gov; williamsh8@michigan.gov; messerq@michigan.org; Banghart-linnl@michigan.gov
Cc: jbursch@burschlaw.com; David Porter
Subject: House of Representatives v DTMB et al - Notice of Motion for TRO
Attachments: Verified Complaint & Exhibits.pdf; Motion for TRO and Preliminary Injunction.pdf

[Report This Email](#)

I write on behalf of the House of Representatives to notify you that the House is preparing to file with the Court of Claims a Verified Complaint for Declaratory and Injunctive Relief and Ex Parte Motion for Temporary Restraining Order relating to recent actions taken by Defendant Executive Departments and Agencies to encumber or spend disputed work project appropriations. Attached is an unstamped copy of the Complaint and Motion that we are filing with the Court.

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Attorney

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