The Maryland Board of Public Works

The Maryland Board of Public Works

A History

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The *Maryland Board of Public Works, A History,* is available from the Maryland Hall of Records, P.O. Box 828, Annapolis, MD 21404.

Foreword

Alan M. Wilner's authorship of the history of the Board of Public Works continues a fine Maryland tradition of jurist-historians that includes Judge Carroll Bond's *History of the Court of Appeals* and Judge Edward Delaplaine's biography of Governor Thomas Johnson.

When I first read Judge Wilner's manuscript in the summer of 1981, it was immediately clear that it would provide an excellent introduction to the significant collection of archival materials at the Hall of Records relating to the history and work of the Board. At its October 1981 meeting, the Hall of Records Commission agreed. With Judge Wilner's assent and full cooperation, the inevitably long editorial process began shortly thereafter. Dr. Gregory A. Stiverson, the Assistant State Archivist, assumed overall editorial responsibility for the project. He was ably assisted by our invaluable and indefatigable manuscript editor, Ann Hofstra Grogg. Beverly Davis, also a careful editor as well as keyboard operator, patiently prepared the drafts of the text, footnotes, and appendices on our word processing system so that we could go immediately to type, once all last-minute changes had been made. Lynne Browne, Sheila Jennifer, and Douglas P. McElrath read parts or all of the manuscript and expertly handled the tedious job of expanding and verifying citations. "B" Hayek, of the Department of General Services, designed the book and its cover, effectively incorporating materials from the Board's papers that were photographed by Teresa Fountain and Paul Houston of our photolab staff. Will Culen, also of the Department of General Services, expeditiously and expertly handled the award of the contract for printing and publication.

The finding aid to the records of the Board in Appendix B was compiled by Hall of Records staff members Patricia A. Vanorny and Susan R. Cummings, and provides easy access for the first time to the voluminous records of the Board. Together, the history and finding aid present a vastly informative and complete picture of the Board of Public Works to date.

On behalf of the Hall of Records Commission, I would like to thank Judge Wilner for permitting the Commission to publish his history. The Board of Public Works itself expressed the Commission's sentiments well in a resolution passed in December 1981. The Board noted that Judge Wilner's history "succinctly traces the growing importance of the Board in every aspect of State Government, but particularly in capital construction and other matters requiring both careful scrutiny and fiscal integrity . . . (It) is a most useful and readable account of the Board from its beginnings in 1825 to the present time." The Commission also shares the Board's "great admiration and appreciation for the invaluable contribution (Judge Wilner) has made to the better understanding of the work of the Board," and the hope that "with publication of his History by the Maryland Hall of Records, it will receive the wide distribution to libraries and schools that it richly deserves."

Edward C. Papenfuse
State Archivist and Commissioner of Land Patents

Preface

A history of the Maryland Board of Public Works was originally undertaken at the request of the Task Force to Study the Functions of the Board of Public Works, which was created in 1976 by a joint resolution of the Maryland General Assembly. The paper was to be an appendix to the task force's report.

It soon became evident, however, that an adequate treatment of this subject could not be done in that context. The history of the board (and its precursors) is so intertwined with the political, economic, and fiscal history of the state, from a time even predating the Revolution, that a look at the board only in its current framework would have been a sterile, incomplete, and therefore nearly worthless undertaking.

The Board of Public Works is the highest administrative body in the Maryland state government. Consisting of the governor, the comptroller, and the treasurer, it now derives its ultimate authority from the state Constitution and is responsible for the expenditure of all capital appropriations and the superintendence of nearly all state public works projects. Each year it deals with hundreds of millions of dollars; yet, until recently, it also was required to approve extensions of sick leave for state employees as well as their out–of–state travel.

There has never before been a published history of the Maryland Board of Public Works. Few people, except those who have served on the board or regularly dealt with it, have even the most cursory understanding of its functions and operations, much less its history and antecedents. It is for this reason that a complete and definitive history of the board is desirable—not merely as a scholarly exercise but to provide some insights into the nature of the board and the functions it serves.

The Board of Public Works, as currently constituted, was first created by the Maryland Constitution of 1864. It was not the first such board, however; nor is it what the delegates to the 1864 or 1867 Constitutional Conventions had in mind. Indeed, it is the marked variations in duties and functions committed to the board and its precursors over the past 150 years that make the history interesting.

By way of summary, the first Board of Public Works was created by the General Assembly in 1825. If the legislature was the board's mother, its father was the insatiable appetite for getting the state involved in "works of internal improvements," for making every major river and stream in the state navigable, and for connecting the principal waterways by digging canals of various lengths and sizes. The sole function of this early board, which remained in existence for only three years, was to feed that appetite by looking around the state for potential improvement projects.

The second board was created, after rancorous debate, by the Maryland Constitution of 1851. Its function was quite different. The state had had its fill of internal improvements and indeed had, for a short time, been rendered insolvent because of them. This board was supposed to manage the state's huge investments in the various railroad and canal companies in order to make them as profitable as possible to the constituents they served, as well as to the taxpayers. As will be seen, its success in this regard was mixed.

The current board's principal function, as envisioned by the two constitutional conventions that created and continued it, was to dispose of those investments as soon as possible—within a year or two. Most of the debate in the 1864 and 1867 conventions dealing with the board centered on how and when the state could divest itself of those investments. Little regard or comment was given to the ancillary power to "hear and determine such matters as affect the Public Works of the State, and as the General Assembly may confer upon them the power to decide."

That catchall authority has, of course, been the wellspring of nearly all that the board now does. The state's investments in canal and railroad companies have pretty much been liquidated—although it took nearly fifty years to do it; and the board has not had to concern itself with electing directors of those companies or approving their toll rates for sixty or seventy years. By authority of the legislature, however, it has become a silent (and sometimes not so silent) partner in the administration of nearly every phase of the state government. Through its broad powers over state fiscal affairs and the management of state property, it reaches into nearly every state program—education, public safety, health, natural and human resources, transportation. It is, in effect, the capstone of the three state "control" agencies—the departments of Budget and Fiscal Planning, State Planning, and General Services. If any of this was foreseen by the board's creators, the prophecy was not reduced to writing.

Among the difficulties in chronicling this long and complex history is drawing a proper balance between a macro– and microanalysis. One cannot escape analyzing and recording some of the details of the board's work, for to ignore the specifics altogether in favor of generalities would make the story much too shallow. On the other hand, to record and discuss in any significant detail all that has come before the board would not only make the saga unnecessarily long and hopelessly boring but would obscure some more important long–term trends and developments. I have tried to strike a balance in favor of greater detail in the early years of the board's development, when the *relative* importance of individual transactions was somewhat greater, and more generality in the later years, when the categories of matters coming before the board have been, from the perspective of history, more important than individual transactions.

In preparing this history, I am deeply indebted to C. Elizabeth Buckler–Veronis, a friend and former colleague who did much of the initial research into the early antecedents of the board, to the archivists, researchers, and editors at the Hall of Records and the staff of the board itself, who were at all times cheerful and helpful, and to my secretary, Patricia Cater, who displayed infinite patience in typing and retyping (several times) the manuscript.

CHAPTER 1

An Overview of Early Policies: To 1825

Maryland's first Board of Public Works was created in 1825 by the General Assembly. Such a board had been proposed at least as early as 1819, but the idea took six years to win legislative favor. Three factors contributed to the ultimate creation of the board. Most directly, it was the state's growing interest in and infatuation with "works of internal improvements"—a network of roads, canals, and river improvements designed to open efficient trade routes to the West—that prompted the legislature to establish the board. The role of this board was not to limit these ventures, financed increasingly with state funds, but to search out opportunities for new ones.

A secondary factor, which helped to spur this drive for internal improvements, was the desire to run the state government without the need for direct taxation—to finance its limited operations through income derived from state investments in corporations chartered by the legislature. This aspect of fiscal policy—a predominant one for many years—provided an independent incentive for the state to make these considerable investments, to assume the role of capitalist.

Finally, the organic law in effect at the time made the legislature the dominant branch of state government. The governor had little political or executive power and thus could provide no real check on legislative frolics or ventures. There was no fiscal coordination. This, in the end, permitted the unwarranted generosity with state money that eventually rendered the state insolvent.

This chapter will discuss these conditions or developments in reverse order, from the colonial period to the eve of the board's creation.

The first Constitution of Maryland was adopted in 1776. It provided for (1) a bicameral General Assembly, consisting of a House of Delegates elected annually and a Senate chosen every five years by a senatorial electoral college; (2) a governor elected annually by joint ballot of the General Assembly for a one-year term, whose incumbency was limited to three years; (3) a five-member Council to the governor, also elected annually by the General Assembly; and (4) a treasurer of the Eastern Shore, a treasurer of the Western Shore, and commissioners of the loan office, all appointed by the House of Delegates and serving at its pleasure.

The governor under this system had no independent political base and was virtually subservient to the legislature. He had no veto power over legislation but was required, perfunctorily, to sign whatever bills were passed by the General Assembly.

Most of his executive powers were subject to approval of the Council or could be made so by the General Assembly.[1] And, as noted, his term of office, if the legislature willed it, could be limited to one year. Suffice it to say that despite a provision in the attached Declaration of Rights that "the legislative, executive and judicial powers of government, ought to be forever separate and distinct from each other,"[2] the legislative branch was clearly predominant, both constitutionally and politically. Maryland had a modified form of parliamentary government, a political framework that lasted until 1837.

The General Assembly that convened in 1777 faced the immediate and unenviable task of financing an ongoing war with limited resources and an existing debt of considerable size. Most of this debt had been contracted by the Provisional Convention, which in addition to drafting the state's first Constitution had served as the de facto government of the province for at least a year. In order to finance its own programs and activities, the convention had issued bills of credit amounting to more than $535,000, payable in gold and silver and secured only by the faith of the province.[3] As its first fiscal measure, the new General Assembly decreed these bills of credit, as well as those issued by the Continental Congress, to be legal tender in Maryland.[4]

Revenues available to the General Assembly were limited. The traditional sources of license fees and fines remained. Poll taxes and quitrents, however, had been rejected as inequitable,[5] and British control of the seas eliminated port duties.[6] In substitution of these sources of revenue, the General Assembly, with undoubted reluctance, imposed a general property tax.[7]

It appears that these various fiscal measures, including the property tax, still proved insufficient to meet the demands of the war and to repay the state debt. The General Assembly was therefore required to continue the practice of issuing bills of credit and certificates of debt.[8] It was prudent enough to secure these later issues, however, by a variety of property and excise taxes, which by 1782 had produced sufficient revenue to assure the punctual redemption of the obligations and thus to enable the General Assembly to repeal the special taxes.[9]

Not all of the state debt had been so well secured, of course, and once the war ended the legislature still found it necessary to address the problem of debt management. Fortunately a number of new sources of revenue had by then become available.

1. See, for example, Maryland Constitution (1776), arts. 33, 60.
2. Maryland Declaration of Rights (1776), art. 6.
3. John Archer Silver, *The Provisional Government of Maryland, 1774-1777,* Johns Hopkins University Studies in Historical and Political Science (hereafter JHU Studies), ser. 13, no. 10 (Baltimore: Johns Hopkins University Press, 1895); Matthew Page Andrews, *History of Maryland: Province and State* (Garden City, N.Y.: Doubleday, Doran & Co., 1929; reprint, Hatboro, Pa.: Tradition Press, 1965), p. 310; "Journal of the Convention, July 26 to August 14, 1775," in *Archives of Maryland,* ed. William Hand Browne et al., vol. 11 (Baltimore: Maryland Historical Society, 1892), pp. 6-7.
4. Acts of 1777, ch. 9. That act, apparently designed to create a stable currency, did not have its intended effect and was repealed by Acts of 1780, ch. 28. The repealer indeed declared those bills of credit not to be legal tender unless the parties to a transaction agreed to accept them as such.
5. See Maryland Declaration of Rights (1776), art. 13, declaring the poll tax "grievous and oppressive" and, in effect, prohibiting its imposition. Acts of 1780, ch. 18, formally abolished quitrents from and after 4 July 1776.
6. Hugh Sisson Hanna, *A Financial History of Maryland, 1789-1848,* JHU Studies, ser. 25, nos. 8-10 (Baltimore: Johns Hopkins University Press, 1907).
7. See *Report of the Maryland Tax Commission to the General Assembly* (Baltimore, 1888), pp. cxxxi-cxl, which gives a synopsis of the tax measures enacted by the General Assembly. Note in particular Acts of 1777, chs. 21, 22, the texts of which are not printed in the session laws.
8. See, for example, Acts of 1778, ch. 16. See also Acts of 1780, ch. 8 (directing the issuance of partially secured state bills of credit to replace the virtually worthless bills issued by the Continental Congress); 1781, ch. 23.
9. Acts of 1782, ch. 29.

Indeed by 1813 the state appeared to be in such good fiscal shape that its government was able to function, to a large extent, from interest earned on investments without the need of direct taxation.[10]

The legislature was, of course, anxious to perpetuate this ideal state of affairs and thus searched for a dependable source of revenue that would permit the government to continue to operate without direct taxation. Its eye soon focused on the indirect taxation of corporations holding state charters.

Corporations were, and for some years had been, natural prey for the General Assembly; they owed their birth, their powers, their privileges, and often their continued existence to the legislative will. There was no general incorporation law at the time. Corporate charters were issued on an individual basis by the General Assembly, and they often contained special conditions intended to benefit the state. As Hugh Sisson Hanna points out, "The principle was definitely formulated that all corporations enjoying special privileges from the state—such as canal and road companies—should be compelled to make a return for such privileges."[11]

This type of *quid pro quo* was often a continuing one. In many cases the corporate charters issued by the legislature were for fixed periods; unless renewed by that body they simply expired. Thus every ten or twenty years these corporations had to go back to Annapolis and pay whatever price the General Assembly demanded for their continued existence.

How the legislature implemented this general policy can be seen by looking at the early banks chartered in Maryland. It was not at all uncommon, for example, for the original charters to require the banks to set aside a sizable portion of their capital stock for purchase by the state. In the case of the Farmers Bank, the state, through the original 1804 charter, reserved an option to purchase up to one–third of the stock, and it eventually exercised that option.[12] Bank charters, moreover, were among those that had to be periodically renewed, and a number of them were due to expire in 1815. There was by then considerable opposition to banking institutions and thus some sentiment not to renew the charters.[13]

The General Assembly was more perspicacious, however. Instead of allowing the charters to expire, it extended them for an additional twenty years provided the banks agreed (1) to pay a new tax on their capital stock, the proceeds of which were dedicated to the establishment of the public schools, (2) through their directors to form a corporation to build a turnpike from the Big Conococheague River to Cumberland, and (3) to fund that enterprise through subscriptions to the stock of the corporation. What the legislature thus did, at the price of renewing the charters, was to finance both the building of an important road and the development of a public school system—without imposing a direct tax on the people. Through these various devices—the investment

10. Hanna, *Financial History of Maryland*, pp. 20-22. Hanna, p. 41, states that "Maryland had practically realized the millennial condition of a government supported without taxation. Absence of taxation of revenue legislation was the mark of the first quarter–century of the state's history."
11. Ibid., p. 35.
12. See John Wirt Randall, *The Farmers National Bank of Annapolis, Formerly the Farmers Bank of Maryland* (Baltimore: Lord Baltimore Press, 1905), which was compiled at the direction of the board of directors of the bank to commemorate its centennial year. See also Acts of 1805, res. 1 (directing the treasurer to apply $200,000, repaid to the state by Washington, D.C., to purchase Farmers Bank stock); 1807, res. 6 (directing, among other things, the purchase of $80,000 in Farmers Bank stock with surplus money); 1808, res. 12 (directing subscription to 1,400 shares of Farmers Bank stock). The purchase of *bank* stock was somewhat of an anomaly, since the legislature was extremely wary of banks and, indeed, actually forbade the state to deposit any of its funds in a bank or to purchase any bank notes. See, for example, Acts of 1804, res. 9. Randall, *Farmers National Bank*, p. 20, describes the purpose of this prohibition as follows: "One of the matters that seemed to have awakened grave anxiety during that session, on the part of the General Assembly, was the apprehension lest some one or more of the four banks . . . should get on deposit some of the State's good hard cash, which when it had any, all during those early days, was wont to be kept locked up in the two big iron chests, which constituted the actual places of deposit of the state's money and which you may still see in the State Treasury at Annapolis with the ledgers stating accounts, not with such and such a bank, but with *'Iron Chest.'*"
13. Hanna, *Financial History of Maryland*, p. 34; Randall, *Farmers National Bank*, p. 20.

of state capital in corporate stock and the exaction of revenue or services from its somewhat captive corporate creations—the state was able, for a while, to meet two-thirds of its ordinary, and rather modest, expenses.[14]

The reliance of the legislature on corporations as a source of revenue, either through special taxes or borrowing, continued with the progression of the War of 1812. In fact the state's cost of that war was financed primarily through loans from the state–chartered banks rather than through general taxation. By Acts of 1813, chapter 22, the legislature authorized state–chartered banks to lend the state up to one–third of their paid–in capital.

Unlike tax revenue, however, these war loans had to be repaid, and that required the state to liquidate some of its capital investments. Unfortunately the postwar depression had already lowered the value of those investments, thereby worsening the state's plight. The resulting deficit required the General Assembly to reimpose taxation, which it did with great reluctance. As Hanna explains:

> The ideal of a non–taxing state government still held sway. The new taxes imposed were for long regarded as temporary, a necessary evil to be borne until some streak of fortune should restore the treasury to its former condition of surplus. The heavy investment made by the state in internal improvement companies was, in one view, but an expression of this desire—a means by which the fallen fortunes of the state might be restored.[15]

What ultimately led to the creation of a board of public works was the state's growing interest in and involvement with various "works of internal improvements." As will shortly become evident, this was an interest that was, from its inception, closely associated with the desired interdependent relationship described above between the state and its corporations. Those corporations, chartered by the legislature and viewed as the potential source of investment income, undertook the actual construction of the improvements. Unlike some of her sister states, the Maryland state government was not to become directly involved in the undertakings but was, instead, to play the role of capitalist.

Even during the colonial period internal improvements had been contemplated as the means by which to stimulate and expand Maryland's economy. Settlement of the territories in the West and development of a mining industry there offered substantial trade benefits if those areas could be linked by transportation systems to the coast. To that end serious efforts to improve the navigability of the Potomac River had begun as early as 1749 with the establishment of the Ohio Company.

Maryland was, however, not the only state that offered trade routes to the West. As Walter S. Sanderlin has stated:

> For routes of trade, communications, and migration the early pioneers depended for the most part on the rivers and trails which penetrated the first range of mountains. In New York, the Hudson and Mohawk valleys were the main route to the new West. In Pennsylvania, the Juaniata River and Forbes Road provided the easiest access to the Western territories. To the south the Potomac, the James, and the South Carolina trails served settlers and trappers alike. Each one had its advantages and disadvantages. The central routes, in Pennsylvania and the Chesapeake Bay colonies, were shorter and served a greater number of settlers. On the other hand, the extreme northern and southern paths, in New York and South Carolina, had topographical advantages arising from their location at either end of the Appalachian Mountains.[16]

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14. Acts of 1813, ch. 122; Randall, *Farmers National Bank,* p. 20.
15. Hanna, *Financial History of Maryland,* p. 45.
16. Walter S. Sanderlin, *The Great National Project: A History of the Chesapeake and Ohio Canal,* JHU Studies, ser. 64, no. 1 (Baltimore: Johns Hopkins University Press, 1946), pp. 16-17.

Most of the Atlantic states were aware that, in an era of interstate commercial rivalry, retention and exploitation of whatever competitive advantages each possessed could well be dependent upon providing access to the developing lands in the West. This required either roads or a system of rivers and canals, or both.

The Maryland General Assembly recognized the need for such improvements in several enactments beginning in 1783 and 1784. The first of these concerned the Susquehanna River. All but ten miles of that river was navigable, and, if improvements to that section could be effected, increased trade throughout Pennsylvania would be possible. Thus in 1783 the General Assembly granted a charter to the Susquehanna Canal Company. Entitled "An Act for making the river Susquehanna navigable from the line of this State to tide water," the charter authorized the company to construct a canal, at least thirty feet wide and three feet deep, from Love Island to tidewater in the Susquehanna, with a sufficient number of locks large enough to admit boats of eighty–foot keel and twelve–foot beam. Recognizing that the company would be incurring a great expense and risk of financial loss, the legislature gave it an exclusive right to the canal and to the gristmills and waterworks it might erect thereon.[17] The state made no direct investment in the enterprise, but merely encouraged the project by granting the company a monopoly, an exclusive franchise.

The state took a different approach with respect to the Potomac, which was a far more complicated matter—politically, economically, and from an engineering point of view. Efforts to improve the navigability of the Potomac had begun, as noted, in 1749 with the formation of the Ohio Company, and, although that company met with little success after 1764, interest in the project remained alive. Maryland became formally involved in 1784, when the General Assembly enacted a bill "establishing a company for opening and extending the navigation of the River Patowmack."[18]

Sanderlin gives an interesting background to this act:

> The successful launching of the company was primarily the result of one man's efforts and influence. George Washington had long been interested in the improvement of the Potomac, and was completely convinced of the practicability and superiority of the route it provided. Indeed it has been said with considerable justification that the project had become almost an obsession, second only perhaps to his interest in the future of the Union. . . . After his glorious role in the Revolution, his influence in national affairs and particularly in Virginia and Maryland reached its zenith. Nothing these two states could do for him seemed too much. When Washington asserted his belief in the great possibilities of the Potomac route, Virginia legislators promptly passed an act incorporating the Potomac Company and subscribing to one hundred and twenty shares of its capital stock, fifty of which were placed in the hero's name. When Maryland, torn by internal dissension, hesitated to pass an act confirming the Virginia law, a visit from George Washington swept the Assembly off its feet. Maryland affirmed the charter and subscribed to fifty shares in the new company.[19]

The capital of the company was set at $222,222.22, divided into five hundred shares of $444.44 each, and actual incorporation was dependent upon subscription to at least half the shares. Section 20 of the act authorized the state to subscribe to (and pay for) fifty shares of the stock, contingent upon Virginia doing likewise. Thus, unlike the Susquehanna project, in this enterprise the state became a 10 percent investor.

The act authorized the company—the Potomac Company—to "cut such canals, and erect such locks, and perform such other works, as they shall judge necessary, for opening, improving and extending, the navigation of the said river above tide water to the highest part of the north branch to which navigation can be extended." It authorized the imposition of specific tolls at three places along the river, provided the river was navigable to certain points. Section 18 required that work commence within

17. Acts of 1783, ch. 23. Sec. 8 of the act provided that "no other canal shall be built, or the water drawn off between the line of Pennsylvania and tide water, to the injury of the navigation of the said canal, or the waterworks aforesaid erected thereon."
18. Acts of 1784, ch. 33.
19. Sanderlin, *Great National Project*, pp. 30-31.

one year and that specified progress be made within three and ten years, upon pain of forfeiting the rights granted under the act.[20]

Three years later the legislature sought to improve the road connections between Baltimore and the West by authorizing the building of a turnpike fifty–two feet wide, "grubbed and stoned forty feet wide," with a six–foot drainage ditch, from Baltimore to Frederick. To pay for the road a one–year tax of £0.3.9 was imposed on every hundred pounds of property in Baltimore County, of which the tax collector could keep 5 percent "for his trouble." Tolls from the road belonged to Baltimore County, which was to maintain the road.[21]

In 1796 the General Assembly established the Pocomoke Company for the purpose of improving the navigation of the Pocomoke River from Snow Hill in Worcester County to the Delaware River. This, too, contemplated a series of canals and locks, and except for a state subscription the act was similar to that chartering the Potomac Company. The Pocomoke Company was capitalized at $11,000.[22]

In 1799 the Chesapeake and Delaware Canal Company was chartered. It was authorized to "cut such canals, and erect such locks, and perform such other works, as they shall judge necessary for opening, improving and extending, the navigation between the bay of Chesapeake and the river Delaware." The company was capitalized at $500,000, and actual incorporation was made contingent upon subscription to half the shares.[23]

Thus by 1800 the state was already looking to internal improvements to the east, north, and west. Yet, with the rapid development of the West these early efforts soon proved inadequate, especially in comparison with the more ambitious steps undertaken by Maryland's neighbors to the north and south.

In the West, trade on the Mississippi River was facilitated through steam–powered riverboats. These boats enabled New Orleans to attract trade from merchants who had previously utilized the waterways to the east.[24] In response to this competition, Virginia coordinated its internal improvement policy in 1816 with the creation of a board of public works.[25]

To the north, both New York and Pennsylvania made concerted efforts to improve their trade routes. Those states had concluded that substantial internal improvements could not be accomplished solely through private ventures but would require the active participation of the state itself. To that end New York created a Public Works Commission that had the power to borrow $400,000 annually from the state and to begin construction of the Erie Canal. Similarly, by 1820 Pennsylvania had invested $1 million in transportation improvements.[26]

Maryland was not unaware of its competitive position with other states. On 4 December 1820, Gov. Samuel Sprigg wrote to the General Assembly:

> Upon the subject of internal improvements we would only remark, that while our sister states by the means of creating and increasing the facilities of navigation, and transportation by land, and by calling into action all their physical advantages, are endeavoring to draw within their bosoms the wealth of the extremities of the union, we ought not to

20. The act required that navigation between Great Falls and Fort Cumberland be completed within three years (by 1787). This was later extended to 1790, then 1795, then 1798, and finally to 1803. Acts of 1786, ch. 2; 1790, ch. 35; 1794, ch. 29; 1797, ch. 13.
21. Acts of 1787, ch. 23.
22. Acts of 1796, ch. 17.
23. Acts of 1799, ch. 16.
24. Charles E. Fisher, "Internal Improvement Issues in Maryland, 1816-1826" (Master's thesis, University of Maryland, 1972), p. 6. See also Gov. Charles Goldsborough to the Secretary of the Treasury of the United States, 3 December 1819, Executive Letter Book, 1819-34, p. 36, Maryland Hall of Records, Annapolis, accession no. 1892 (hereafter MdHR followed directly by accession no.), in which the governor states that "the general preference given to the conveyance by Steam Boats has caused travellers nearly to abandon [the turnpike road] for 8 months of the year."
25. Sanderlin, *Great National Project,* pp. 49-50.
26. Fisher, "Internal Improvement Issues," p. 2.

be unmindful of the great benefits which are to be derived from the adoption of such a policy.[27]

Hanna ascribes the legislature's unwillingness to take concerted action during this early period to political dissension within its ranks, a dissension that arose in large measure from competition and distrust among the various geographic regions of the state.[28] The Eastern Shore, southern Maryland, the central and western counties, and Baltimore City were beginning to develop along different lines, and that engendered selfish and myopic thinking.

Legislators from each of these areas recognized that benefits could be derived from internal improvements. Unfortunately, however, they tended to sponsor works that would benefit only their locale and to oppose projects designed to aid other areas. The effect, of course, was to preclude state support for a number of proposed ventures, although from time to time the General Assembly did appoint commissions to examine the practicality of certain improvements.[29]

The exception to this rule against state aid was the Potomac Company. As noted, the General Assembly had initially subscribed to fifty shares of that company in 1784—an investment of a little over $22,000. By 1822 the state owned $120,444.44 of Potomac Company stock, and to protect this investment the legislature had authorized a $30,000 loan to keep the company in operation.[30]

Making the Potomac River navigable for any meaningful distance was a major undertaking—more substantial than anyone realized at the time—and thus any benefits accruing from that project were a long way off. In the meantime the effect of the legislature's inability to develop a coordinated improvement policy was a continued reliance on the existing turnpike system developed largely by the banks. In 1817 the General Assembly directed the banks to submit to the executive department information on these turnpike roads and ordered the governor to assemble the information and submit a report to the next session of the assembly.[31]

When in 1819 Gov. Charles Goldsborough reported to the General Assembly on the turnpike system in the state, he closed with the following observation:

> The creation of a board of commissioners of public improvements, would probably give a stimulus to the public and produce much good. It might be advisable to give no salaries, but being elected by the legislature, the distinction would be coveted by those willing to give their attention to subjects of this nature. An appropriation for the expenses of a surveyor or engineer would however be necessary, and an examination of the means and sources of internal improvement made throughout the whole State, which could not fail to be useful. The official reports of such a body would be entitled to credit, and its very creation be beneficial, by encouraging a turn for useful improvement in every county throughout the State.[32]

27. Gov. Samuel Sprigg to the General Assembly of Maryland, 4 December 1820, Executive Letter Book, 1819-34, p. 66.
28. Hanna, *Financial History of Maryland*, p. 74. See also James S. Van Ness, "Economic Development, Social and Cultural Changes: 1800-1850," in *Maryland: A History, 1632-1974*, ed. Richard Walsh and William Lloyd Fox (Baltimore: Maryland Historical Society, 1974), pp. 156-238.
29. See, for example, Acts of 1816, res. 76 (dealing with the Susquehanna River); 1822, res. 28 (relating to a Baltimore to Susquehanna River canal); 1822, res. 33 (relating to a Baltimore to Potomac River canal). See also William Howard to Thomas Culberth, Esq., Clerk to the Council, 18 January 1826, Maryland State Papers, ser. A, MdHR 6636-124-7, in which Howard offered to return to the state surveying equipment purchased by the commission to survey the Baltimore to Potomac River canal.
30. Fisher, "Internal Improvement Issues," p. 15; Acts of 1813, res. 8, extended by Acts of 1818, res. 29; 1822, res. 43. See also Acts of 1818, ch. 154, sec. 18, which directed the treasurer to set aside certain lottery funds for later appropriations to canals and other improvements and which Sanderlin, *Great National Project*, p. 38, indicates was passed for the benefit of the Potomac Company.
31. Acts of 1817, res. 64. See Gov. Charles Ridgely to President of the Senate and Speaker of the House of Delegates, Letter Book of the Council, 1819-34, p. 5, MdHR 1892, in which he indicated that the report was not ready at that time. The report was submitted by his successor, Gov. Charles Goldsborough.
32. Gov. Charles Goldsborough to the President of the Senate and the Speaker of the House of Delegates, 1819, Letter Book of the Council, 1819-34, pp. 8-16.

During this 1818-19 session Del. Clement Dorsey received leave from the House of Delegates to introduce "an act to promote internal improvements, and establish a board of commissioners for that purpose." Although Dorsey and delegates Thomas Kennedy, Benjamin W. Lecompte, Kensey Harrison, and Thomas Kell were ordered to prepare the act for introduction, the *House Journal* does not show that it was, in fact, introduced. The legislature did, however, direct that a study be made of the feasibility of the state's purchase of the turnpike roads.[33]

The next record of legislative action with respect to a board of public works appears in the *House Journal* of the 1821 session. On 8 January 1822 the clerk was ordered "to furnish the committee on internal improvements with a copy of the act, with its supplements, if any, of the legislature of Virginia, establishing in that state a board of public works." The Committee on Internal Improvements reported to the General Assembly on 11 February 1822. After stressing the importance of internal improvements and recommending the development of water transportation rather than roads, the committee concluded with a recommendation for a board:

> To keep alive the attention and the zeal of the state upon this question, your committee conceive no better plan could be devised than the establishment of a board of public works. As this however is a matter for which the state may not yet be prepared, and which may require much more information in regard to the objects of internal improvement, than your committee have it in their power to present, they would recommend for the present the institution of a committee to be selected by the executive from among the most intelligent members of the community, with directions to report either individually or collectively to them, the most judicious course of improvement in reference to the roads, canals and rivers of the state, or such parts of them as may come under their notice. And further, that the executive be authorized, if they should deem it expedient, to cause surveys to be made, and maps to be returned of such districts, roads or water courses as in their opinion may be necessary to the illustration of any proposed plan of operation, and that directions be given, that such reports be made, if possible, in time for the meeting of the next general assembly.

The committee's resolution evidently failed, but it was reintroduced by Kennedy during the following session.[34] Again the *Journal* does not reflect any action on the resolution.

The General Assembly considered the subject of internal improvements again in its 1823 session. The *House Journal* reflects that the governor's comments on the subject were referred to the Committee on Internal Improvements, but the text of those comments is not preserved. Whatever the governor's wishes, the General Assembly continued to disagree on any coordinated approach to internal improvements, although at the urging of the Senate it seems that a committee of senators and delegates was appointed to see if the legislature could "lay aside our prejudices and to unite in some plan by which the pecuniary resources of the state may be applied in just and reasonable proportions to the several canals proposed to be made." The *House Journal* of the 1824 session of the General Assembly contains a message from the Senate rejecting a "bill to incorporate the president and directors of the board of public works" but no other action with respect to such a board.[35]

This chapter of the state's history was thus marked by an intense interest in various canal and turnpike projects, but because of the legislature's inability to agree on a unified approach to internal improvements, no substantial commitment of state

33. *Maryland House Journal* (1818), p. 67 (hereafter *H. Jour.*); Acts of 1818, res. 74.
34. *H. Jour.* (1821), pp. 51, 106-11; (1822), p. 16.
35. Ibid. (1823), pp. 13, 105-6; (1824), p. 162.

resources to fund them was forthcoming. Hanna estimates that in all the state invested only about $250,000 in internal improvement projects by 1825.[36] By the standards of the time this was a considerable investment, but it was expended over a period of several years and was derived from current revenues. Furthermore, no *debt* had been created to finance the state's investments.

36. Hanna, *Financial History of Maryland*, p. 78.

CHAPTER 2

The First Board of Public Works and the Mania for Internal Improvements: 1825-1850

The year 1825 was pivotal for the state. It marked the end of one era and the beginning of another. A legislature in which intersectional jealousies had stalemated internal improvement projects suddenly decided that there was no need to pick and choose among competing pork barrels; the state, for its greater advantage, would help to finance them all.

It was a fateful undertaking. The state marched proudly and resolutely into what it thought would be economic paradise. The paradise, however, turned out to be a quagmire, and, as Napoleon learned in Russia, the retreat was a great deal more difficult and costly than the advance. The state began its effort in the customary manner, with fixed subscriptions to the capital stock in several ventures; but as some of these ventures—in particular the Chesapeake and Ohio Canal Company and the Baltimore and Ohio Railroad Company—sank deeper and deeper into the fiscal quagmire, the state, in a continuous rescue mission, marched right with them until it, too, was over its head in debt.

The legislature embarked on this course in its 1825 session, which produced two significant bills—one that inaugurated the state as financier of ambitious improvement projects and a second that created the first Board of Public Works to superintend those projects.

The act creating the board stated in its preamble the legislative purpose:

> It is the opinion of this General Assembly, that the prosperity of this state would be quickened and better assured by the creation of a board of public works, whose duty it shall be to form and propose plans of internal improvement by means of roads and canals; to superintend the execution of such, as the legislature may approve and authorize; to devise and suggest the ways and means necessary to complete the same; and generally to take under their care and control the stock or property which this state does and may possess in these improvements.[1]

The board as constituted by the General Assembly consisted of the governor, as its president, and eight other named individuals who, in the event of a vacancy, were to be replaced by appointment of the governor and the Council concurrently. Its duties were singularly directed at developing plans for various works of internal improvements, including specific canal projects, and superintending the construction and financing of those improvements. Section 3 of the act required the board:

1. to "cause those parts of the territory of this State and the District of Columbia, which shall lie upon or contiguous to the probable courses and ranges for a

1. Acts of 1825, ch. 166.

canal by which the port of Baltimore may be connected with the proposed artificial navigation of the Potomac river, to be explored and examined for the purpose of fixing and determining the most eligible and proper route for the same";

2. to "cause such of the lowlands on the margin of the rivers and creeks in this state, as they shall think proper, to be explored and examined, for the purpose of draining, embanking, and rendering the same dry and cultivable";
3. "by exploring and surveying the intermediate country with streams, ascertain the best practicable route for a canal between the eastern branch of the Potomac River, and also between any lateral canal to Baltimore and the City of Annapolis";
4. to "cause to be explored, surveyed and sounded, such portions as they may deem necessary, of the Susquehannah, Pocomoke, Manokin, Wicomico, Great Choptank, Chester, and all other rivers of this state, and of the country adjacent thereto, for the purpose of ascertaining the practicability and expense of opening and improving the navigation of said rivers, and of devising the most proper plans for effecting those objects"; and
5. to "cause the necessary surveys and levels to be taken, and accurate maps, field books, drafts and models thereof, to be made; and further to recommend the most proper plans for the formation and construction of said canal, and other improvements, and thereafter, in like manner, to proceed in reference to any road, canal, or other improvement which they may be required to explore, locate and construct, altogether or partly in behalf of the people of this state."

Section 4 of the act required the board to estimate the sums necessary for completing the contemplated improvements and "such others as may hereafter be in like manner proposed." It further required the board to present to the next session of the legislature all of its estimates, surveys, maps, field books, plans, drafts, and models, together with a comprehensive report of its proceedings.

Section 5 directed the board to make application to the United States, other states, and to individual landowners for donations of land or money to aid in the construction or completion of any proposed road, canal, or other improvement.

Section 6 created an internal improvement fund consisting of "all grants, cessions, donations and subscriptions" made or given for that purpose to the board by the General Assembly, the Congress, or by other states, corporations, and individuals. The fund was to be "superintended and managed" by the board, with the aid of the treasurer of the Western Shore. When required by the legislature, the board was authorized to borrow money, "on the credit of the people of this state," in augmentation of that fund. The treasurer was directed to "issue transferrable certificates of stock payable at such time or times as may be determined by law or by [the board]" for these loans.

Section 7 directed the board annually "to cause an inventory or schedule to be made of the property belonging to this state in the respective road and canal stocks or companies."

Section 8 authorized the board to represent the state's interest in all of the internal improvement companies chartered by the legislature and to report upon "the prospect, progress and condition of all works and stocks of this kind in which the state may be or shall propose to become a proprietor, and in like manner to communicate their views as to any practicable and expedient extension of internal improvements by such means." The board was further directed to ascertain "whether to any, and to what amount, and upon what terms, loans of money may or can be procured at home and abroad, *on the credit of this state,* for the purposes aforesaid" (emphasis added).

Finally, in terms of its relevance here, section 9 of the act directed the treasurer of the Western Shore, on warrant of the board, to "pay out of any monies in the treasury not otherwise appropriated" up to $6,000 for the performance "of any of the duties prescribed by this act," for which the board was to account to the treasurer and the General Assembly.

This act establishing the Board of Public Works was apparently the product of a delicate compromise finally developed among regional interests in the General Assembly, under which each major area of the state would have a share of proposed internal improvements. As noted, the new board was to develop plans for (1) a canal connecting the Potomac River to Baltimore, (2) draining the marshlands, (3) a canal between the Potomac and Annapolis, and (4) improving the navigability of the major rivers on the Eastern Shore. This compromise was even more clearly reflected in the second of the two acts passed at the 1825 session—the one that, without question, committed the state to a network of internal improvements.[2]

The first part of this internal improvement act provided for the incorporation of the Maryland Canal Company, "so soon as the board of public works of this state shall by actual survey have ascertained and reported to the governor and council, the practicability of excavating a canal as hereafter described, from some convenient point on the Potomac River intersecting or continuing the Chesapeake and Ohio Canal, to the city of Baltimore." This, presumably, had reference to the first duty of the board under section 3 of chapter 166, to explore a route for the canal.

The stock of the company was to consist of an amount "which may as aforesaid, by the board of public works be estimated to be necessary for the execution of the works hereafter mentioned," divided into shares of $100 each. The authorized capital could be increased by the stockholders if it proved insufficient. Actual incorporation depended upon subscription to at least half the authorized shares. The company was authorized, upon incorporation, "to cut canals, erect dams, open feeders, construct locks, and perform such other works as they [the directors] shall judge necessary and expedient, for completing a canal from the termination or other point on the Chesapeake and Ohio Canal, to be determined as aforesaid by the board of public works, to the city of Baltimore."

The General Assembly obviously expected the canal to be a financial success. Section 11 of the act required at least annual dividends of the net profits, "until the annual dividend [on the shares] shall have reached twenty per cent beyond which it shall never extend." If the net profits exceeded that amount for two successive years, the excess was to be applied to "strengthening, improving and extending the works of the canal"; and, if dividends continued to exceed the 20 percent limit, tolls were to be reduced. As a product of this optimism the act "instructed and required" the treasurer of the Western Shore to subscribe to 5,000 shares ($500,000) of the company's stock. Having thus provided for this lateral canal to Baltimore, the act then provided for financing the primary canal—the Chesapeake and Ohio.

At this point a historical digression is in order. As noted earlier, the Potomac Company had been chartered by Maryland and Virginia in 1784 in order to make the Potomac navigable. By 1799, according to Sanderlin, "company affairs seemed to have come to a standstill and the company itself was on the verge of failure." Then the Maryland General Assembly "breathed new life into the enterprise" by subscribing to an additional 100 shares of stock at £130 per share. This infusion allowed the work to continue, and by 1802 the river was navigable for 220 miles, from the mouth of the Savage River to tidewater.[3]

After 1802, however, the company diverted its attention to improvements in the branches and tributaries of the Potomac, particularly the Shenandoah, which served to exhaust its resources. By 1822 not only was the company hopelessly in debt, but interest in developing a waterway transportation system through river improvements had given way to the alternative of constructing permanent canals. At least three

2. Acts of 1825, ch. 180.
3. See chapter 1; Acts of 1784, ch. 33; Sanderlin, *Great National Project*, pp. 35-36.

efforts had been undertaken in Virginia to build canals along the banks of the Potomac between 1812 and 1823.[4]

In 1820 the Virginia Board of Public Works was authorized to survey the land between the Potomac and the southern branches of the Ohio to determine whether the two rivers could be connected by a canal. Two inspections were made, both concluding that such a connection was feasible. One report estimated the cost to be $1,100,000, the other $1,574,000.[5]

In 1823 Virginia, forsaking the Potomac Company, incorporated the Potomac Canal Company to undertake the task of building a canal to the Ohio but made the incorporation contingent upon confirmation by Maryland. Twice the matter was presented to the Maryland General Assembly without success. Not only did the state have a considerable investment in the existing Potomac Company, but the Baltimore City interests could see little advantage to themselves from such an enterprise. Unless a way were found to connect the city to the proposed canal, the city might in fact suffer a great deal from the project.[6]

By 1825, however, a campaign to develop support for the project, initiated by a convention of canal supporters in 1823, had aroused sufficient interest in the Maryland counties to cause the General Assembly, at its 1824 session, to confirm the act of the Virginia legislature.[7] Following a preliminary report by the U.S. Board of Engineers in February 1825, which concluded that a canal was practicable, both the U.S. Congress and the Pennsylvania legislature also confirmed the charter, with the company thereafter to be known as the Chesapeake and Ohio Canal Company.

The General Assembly, now having provided for both the primary and the lateral canals, turned its attention to the Eastern Shore projects mentioned in the act creating the board. In section 21 of the internal improvement act (chapter 180), it appropriated $200,000

> to drain, embank, and render dry and arable the low lands on the margins of such rivers and creeks of the Eastern Shore of this state, as the board of public works may think proper and recommend, and to complete and carry into effect such plans for opening and improving the navigation of the Pocomoke, Manokin, Wicomico, Great Choptank, Chester, Elk and North East rivers, as the board of public works may devise, recommend and contract for on behalf of the state of Maryland.

Section 21 then added certain conditions to the expenditure of the sums so appropriated as well as to the subscriptions for new stock in the Chesapeake and Ohio Canal Company or the Maryland Canal Company. Those provisos were that (1) Congress authorize a subscription for 10,000 shares of the capital stock of "the eastern section of the Chesapeake and Ohio Canal"; (2) the Board of Public Works ascertain and certify the practicability of connecting the C & O Canal with the Patapsco River at the city of Baltimore "by the canal described in this act"; (3) unless the Board of Public Works adopted "for the said canal, a line wholly within the State of Maryland," Congress authorize the state and any company incorporated by it, to cut through the District of Columbia in connecting the C & O Canal with Baltimore; and (4) the governor be satisfied that the amount estimated by the U.S. Board of Engineers to be needed to complete the eastern section of the C & O Canal, after deducting the subscriptions by the state of Maryland and the United States, has been actually subscribed by "bona fide and competent subscribers."

Moving counterclockwise around the state, the legislature, in section 22 of the act, provided that

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4. Sanderlin, *Great National Project,* p. 49.
5. Ibid., pp. 50-51.
6. Andrews, *History of Maryland,* p. 454; Van Ness, "Economic Development," pp. 192-93.
7. Acts of 1824, ch. 79.

> if at any time hereafter a company shall be formed for the purpose of making a canal from the city of Baltimore to York Haven, on the river Susquehannah, of the dimensions contemplated in the report of the commissioners to survey the practicability and probable expense of [such a canal], the faith of the state is hereby pledged to grant a charter to such company . . . to extend the canal from the Potomac to the city of Baltimore, called the Maryland canal; and the faith of the state is also hereby pledged to subscribe for stock in said company to the amount of five hundred thousand dollars; *Provided,* That such subscription shall not be made until the executive of this state, for the time being, shall be satisfied, that with the amount so to be subscribed on the part of the state, the whole sum necessary to the completion of the said canal hath been actually subscribed by bona fide and competent subscribers.

In order to finance these various improvements, section 22 directed the treasurer of the Western Shore, "under the direction of the executive," to

> negotiate for, and raise by loan, as they may become payable for canal stock, or other improvements hereinbefore contemplated under the provisions of this act, the required sum or sums of money, at the rate of interest not exceeding five per centum per annum, payable quarter yearly; the whole of said loans to be redeemable at the pleasure of the state, at any time after [1 January 1860].

Section 23 required that the "dividends and other emoluments" accruing to the state from "the various investments hereby authorized and from the road stock now belonging to the State" be pledged to a sinking fund under the management of the Board of Public Works "to pay and discharge the public debt incurred by the subscriptions hereinbefore authorized."

Although the legislature had previously assumed the role of capitalist by directing the purchase of stock in the Potomac Company as well as various banks and turnpike companies, the synthesis of these two 1825 statutes—chapters 166 and 180—embarked the state for the first time on a comprehensive program of state–financed internal improvements. Those two acts represented a commitment by the state to expend large sums of *borrowed money* for a vast network of internal canals and river projects, provided they were feasible, and to create a Board of Public Works charged with (1) determining their feasibility, (2) accepting donations of property and money in aid of the improvements, and (3) representing the state's stockholder interest in the companies chartered by the legislature to make the improvements.

Samuel P. Smith, an Allegany County delegate to the 1850-51 Constitutional Convention, characterized the board's purpose as follows:

> They were under law required to investigate and examine all the various portions of the State, to ascertain where improvements might be advantageously made. At that time there was a perfect *mania* spreading not only throughout the State of Maryland, but throughout the nation. Almost every creek in the State was examined and surveyed, in order to determine how far it was practicable to make valuable improvements.[8]

Very few records pertaining to this first Board of Public Works exist. It is therefore difficult to judge directly how and to what extent it actually performed its statutory functions.

On 26 April 1826 Joseph Merrick, who had been appointed secretary to the board, wrote the clerk of the governor's Council asking for

> copies of Gates' Canal laws of New York, Strickland's report, & the several reports to the Legislature of this State, heretofore made by Commissioners appointed to explore and

8. *Debates and Proceedings of the Maryland Reform Convention to Revise the State Constitution* (Annapolis, 1851), 2:397 (hereafter *Reform Convention Debates*).

examine any of the waters of this State together with the notes of the engineers & other documents accompanying such reports. It would be desirable to the Board also to have any charts, maps, etc. of the waters and territory of this State, which may be in the possession of the Executive.[9]

Except for entries in the journals and ledgers of the treasurer of the Western Shore, showing payment of the expenses of the members of the board, no other records exist to document what the board did. A daybook entry for 30 April 1826 shows that on 20 April payment of $1,500, chargeable to the board, was made to "Gov. Jos. Kent President thereof by its order, in virtue of the Act of 1825, Ch. 166, Sec. 9." On 30 May the daybook shows expense payments of $96.75 to three members of the board. Similar expense accounts appear for one or more members on 31 December 1826 ($30.00) and 29 January ($214.00) and 31 December 1827 ($279.68).[10]

Section 2 of chapter 166 of the Acts of 1825 had authorized the board to appoint a secretary and

to employ such and as many agents, engineers, surveyors, draftsmen, and other persons as in their opinion may be necessary to enable them to fulfill and discharge the duties imposed upon them by this act; and to allow and pay the said secretary, agents, engineers, surveyors, draftsmen, and other persons, such sum or sums of money as may be adequate recompense for their services.

The ledgers of the treasurer, however, show that for the entire period of the board's existence the only disbursements chargeable to the board's account were the $1,774.75 paid to the governor, $367.99 in expense allowances to board members, and, on 30 November 1829, a reversion of $55.00 to the state. Total disbursements over a two-year period amounted to $2,197.74,[11] which would indicate that few, if any, of the technical personnel authorized by section 2 were ever hired.

Evidently not everyone was pleased by the board's efforts. During the next session of the General Assembly a proposal was made to repeal the statute creating the board.[12] The journals of the following session indicate no further consideration of the board. In a message to the legislature, Gov. Joseph Kent was able to assure the General Assembly that, based on subscriptions to the proposed internal improvements, he was confident of their prompt completion. He did, however, reiterate a previously expressed reservation about the state's role in public works:

Notwithstanding the great advantage Maryland will obviously draw from these works they possess more of a national than local character and we have no doubt will receive the fostering aid of the National Government, which has heretofore been so wisely extended to works of a similar nature, though of minor importance.[13]

By 1826 the U.S. Board of Engineers had completed its survey of the feasibility of the Chesapeake and Ohio Canal. In marked contrast to the earlier reports in 1820 and 1822, the Board of Engineers designed a canal involving 398 locks and a tunnel four miles long and estimated the cost of construction to be $22 million, exclusive of

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9. Joseph Merrick to Thomas Culberth, Esq., Clerk to the Council, 24 April 1826, Maryland State Papers, ser. A. MdHR 6636.

10. Treasurer of the Western Shore, Day Book, 1826-36, 30 April, 30 May, 31 December 1826, 29 January, 31 December 1827, pp. 10, 12, 37, 40, 79, MdHR 3562.

11. Ibid.

12. *H. Jour.* (1826), p. 573. Delegates John W. Thomas, Samuel Sutton, Joseph Harlan, Samuel Barnes, and James W. M'Culloh were formed into a committee to prepare a bill, but there is no indication that such a bill was introduced that session.

13. Gov. Joseph Kent to the General Assembly, *Maryland Senate Journal* (1827), pp. 9, 10 (hereafter *S. Jour.*). There was, at the time, a serious question of whether the federal Constitution permitted federal expenditures for works of internal improvements. Indeed both James Madison and James Monroe had vetoed on constitutional grounds acts of Congress providing for such improvements. See *Messages and Papers of the Presidents, 1789-1897,* ed. James Daniel Richardson (Washington, D.C.: Government Printing Office, 1896-99), 1:584; 2:143.

land costs and unforeseen contingencies. This estimate, according to Sanderlin, "fell like a thunderbolt on the hopes of the canal supporters," who called for a second convention to discredit the report. One of the delegates to that convention was Philip E. Thomas, then president of the Merchants' Bank of Baltimore, who became convinced "of the absolute futility of the canal enterprise, especially as one affording any commercial relief to Baltimore."[14] It was at this point that the attention of the legislature shifted to a new invention called the railroad.

According to John Latrobe, counsel to the Baltimore and Ohio Railroad Company for sixty–four years, the first serious consideration of a railroad as an acceptable alternative to canals developed at a dinner in the fall of 1826 at the home of Col. John Eager Howard. Evan Thomas had recently returned from England, where he had inspected the Stockton and Darlington Railroad, and he described that enterprise to the group. Especially interested in the scheme was his brother Philip Thomas, who, according to Latrobe, "was associated with men who, like himself, were prosperous merchants and whose confidence in him was unbounded." Among his colleagues Philip Thomas touted the idea of drawing carriages upon iron rails, whether by steam or by the more reliable horse.[15]

On 2 February 1827 a meeting was held at the home of George Brown, a banker who had received from his brother in England a number of documents pertaining to the railroad between Liverpool and Manchester. The two Thomas brothers led a discussion of the advantages to Baltimore of a through trade route to the West. Another meeting was called for ten days hence, to which twenty–five of the city's leading merchants were invited. Included in the assemblage was William Patterson, a well–known merchant whose daughter had married Prince Jerome Bonaparte. After further discussion a committee was appointed to report on "the practicability of a railroad from Baltimore to the Ohio." The committee reported back a week later, recommending that immediate steps be taken to incorporate a railroad and build a line to the Ohio River.[16]

The group adopted the report and a resolution "that immediate application be made to the Legislature of Maryland for an act incorporating a joint stock company to be styled 'The Baltimore and Ohio Railway Company,' and clothing such company with all the powers necessary to the construction of a railroad, with two or more sets of rails, from the city of Baltimore to the Ohio River." The resolution further suggested that the capital of the company be $5 million, with the states, the United States, corporations, and individuals able to subscribe.[17]

A committee was appointed to prepare a formal application to the General Assembly. Its members included Charles Carroll of Carrollton, William Patterson, Alexander Brown, Philip Thomas, and others from the elite of Baltimore. Though not a member of the committee, the services of John V. L. McMahon, an attorney and delegate from Baltimore City, who also happened to be chairman of the House Committee on Internal Improvements, were acquired in drafting a charter for submission to the legislature. When the draft was presented to the group, one of the committee members, Robert Oliver, was said to remark, "You're asking for more than the Lord's Prayer," to which McMahon responded that "the more they asked for, the more they would get."[18]

14. Sanderlin, *Great National Project*, p. 55; Edward Hungerford, *The Story of the Baltimore & Ohio Railroad, 1827-1927* (New York: G. P. Putnam's Sons, 1928), 1:17.
15. Hungerford, *Story of the Baltimore & Ohio*, p. 18.
16. William Prescott Smith, *A History and Description of the Baltimore and Ohio Railroad, By a Citizen of Baltimore* (Baltimore: J. Murphy & Company, 1853), p. 10; Hungerford, *Story of the Baltimore & Ohio*, pp. 19-20.
17. Hungerford, *Story of the Baltimore & Ohio*, p. 25.
18. Ibid., p. 29.

The General Assembly had by then been in session for two months, and as usual it had been considering a number of canal, turnpike, and bridge proposals. The *House Journal* shows that on 27 February 1827 the House "resolved itself into a committee of the whole house, on the memorial of Charles Carroll, of Carrollton, William Patterson, Robert Oliver, Isaac McKim, and other citizens of Maryland, and inhabitants of the city of Baltimore, praying the passage of an act to incorporate a company, to be entitled the Baltimore and Ohio Rail Road Company." The *Journal* further states that "after some time spent therein," John Stricker, a delegate from Baltimore City, reported that the committee "directed him to report a bill, which he then delivered, with said memorial, to the Speaker, entitled, An act to incorporate The Baltimore and Ohio Rail Road Company." The bill was then read twice (the latter by special order); two amendments were defeated and one adopted; the bill was then read a third time, passed by vote of 59 to 10, and sent to the Senate.[19]

On the same day, 27 February, the *Senate Journal* reflects delivery of the bill from the House and a first reading. The bill was ordered to be printed and made a special order for 2 March. The next day, however, the motion for special order was withdrawn, and the bill was read twice more and enacted as chapter 123, Acts of 1827.[20]

The charter so swiftly enacted incorporated the railroad and appointed nine commissioners to receive subscriptions to the capital stock. The capital was set at $3 million (30,000 shares at $100 par), of which for a period of twelve months 10,000 shares were reserved for subscription by the state and 5,000 by the city of Baltimore. The remaining 15,000 shares were open for subscription by any other corporation or individual. Effective incorporation was delayed until 10,000 shares were subscribed. No mention of the Board of Public Works was made in the act of incorporation.

In 1828, having now authorized at least three canals and a railroad, the General Assembly abolished the Board of Public Works. No reason for the action appears in the record. The journals of the Senate and House of Delegates show only that the House Committee on Internal Improvements was directed to study the efficacy of abolishing the board and that it concurred in the board's demise. A committee bill to achieve that result was introduced and enacted. The treasurer of the Western Shore was directed to compile an annual inventory of the state's interest in internal improvements and to represent those interests.[21]

Without executive direction, the General Assembly thereafter proceeded to open the state's pocketbook to the demands of the voracious entities it had created. In 1831 it authorized the B & O to build an additional line from Baltimore to Washington, reserving to the state the right to subscribe to stock in an amount equal to the whole or any part of the cost of constructing the new line, or, in the alternative, a separate class of stock not exceeding five–eighths of the cost of the entire road. The subscription price could be paid in cash or in "stock of the State" bearing interest at 4 1/2 percent per annum. Section 5 of the act allowed the state to appoint auditors and directors to ascertain the cost of the road and superintend the interest of the state in any separate stock elected to be taken.[22]

In 1832 the General Assembly authorized an increase in the company's stock to finance the Washington Branch of the B & O, provided that the state's option to subscribe for five–eighths of the cost remained unimpaired. Baltimore City was au-

19. *H. Jour.* (1826), pp. 396-97.
20. *S. Jour.* (1826), pp. 130, 137.
21. *H. Jour.* (1828), pp. 142, 249, 368; *S. Jour.* (1828), pp. 92, 146, 148, 152; Acts of 1828, ch. 64.
22. Acts of 1830, ch. 158.

thorized to subscribe for an additional 5,000 shares. At the following session the General Assembly again changed the mode of control over the state's investment in public improvements, enacting a law that directed the governor, with the consent of the Council, to appoint three persons to represent the state, as a stockholder, at annual stockholders' meetings.[23]

The legislature opened the state's coffers again in 1833. Recognizing the financial problems involved in building the Washington Branch, the General Assembly authorized the treasurer of the Western Shore, after being satisfied that $1 million had been subscribed toward the venture, to subscribe for the state $5 million for the line. The subscription was to be paid in cash or in twenty–five–year 4 1/2 percent stock of the state. The statute provided that the stock subscribed by the state should "be considered as a separate and distinct stock forever." It set a $2.50 minimum charge for passengers, of which the state arrogated to itself one–fifth or in no event less than 25 cents per passenger per trip. Individual subscribers to the Washington Branch stock (including, presumably, the turnpike companies and probably the city as well) would continue to vote their stock as before. The state, however, was authorized to appoint two additional directors.[24]

At the 1835 session of the General Assembly three bills pertaining to the B & O were enacted, each dealing, in part, with the financial problems faced by the company in building the road to the Ohio River. One extended the time required for completing the road as set forth in the charter. The second authorized Baltimore City to subscribe to $3 million in B & O stock and entitled it to elect one additional director for each 5,000 shares ($500,000) subscribed, in addition to the two directors to which it was entitled by virtue of the stock already held.[25]

The third act attempted to resolve jurisdictional conflicts between the B & O and C & O. A dispute had arisen between the two companies almost immediately after construction of the Ohio line commenced, giving rise to the first in a series of litigations between them. The dispute concerned primarily the desire of each company to prevent the other from locating in certain areas of the state where it intended to operate but where, because of the topography of the land, they could not both operate. The Court of Appeals decided the question in favor of the canal company, holding that it had prior rights to the route.[26]

By chapter 395 of the Acts of 1835 the General Assembly attempted to settle the dispute by means of arbitration, offering a subscription of $3 million to each company if they both assented to the terms of the act. The act also included inducements for the Eastern Shore Railroad Company, the Annapolis and Potomac Canal Company, and the Maryland Canal Company, to which, subject to certain contingencies, subscriptions of $1 million, $500,000, and $500,000 respectively were pledged. Altogether an $8 million loan was authorized by the act, and the governor was empowered to appoint three "discreet, competent and suitable persons" to proceed to Europe to negotiate the loan.

The bonds authorized by this act were to bear interest at 6 percent and were to be sold at no less than 20 percent above par, net to the state. Unfortunately the commissioners were unable to negotiate the loan on those terms, and $6 million of the bonds were sold instead to the C & O and the B & O, with each taking $3 million. When some question about the legality of the transaction arose, the next legislature

23. Acts of 1831, ch. 330; 1832, ch. 318.
24. Acts of 1832, ch. 175. The $2.50 minimum fare could be reduced with the consent of the General Assembly, but the state's minimum share was fixed. Even if the fare were reduced below $1.25 it appears that the state would still have received its minimum share of 25 cents.
25. Acts of 1835, chs. 245, 127.
26. Acts of 1835, ch. 395; *Canal Company v. Rail Road Co.*, 4 G & J 1 (1832).

ratified the deal and declared the state's subscription binding but rated the bonds at $120.[27]

Apparently the two companies had no better luck than the state in disposing of the bonds, which prompted the enactment of an 1838 statute that got the state in even deeper. Under that act, in return for a release of the state by the companies from the contracts for the sale and purchase of the bonds issued under Acts of 1835, chapter 395, and the surrender of such bonds, the state agreed to deliver to the companies fifty–year sterling bonds at 5 percent redeemable in London in the amount of $3,200 for each $3,000 of old bonds surrendered. The companies had to give the state a lien to secure the payment of three years' interest, with this provision replacing the 20 percent premium on the old bonds from which the three years' interest was to be paid.[28]

The legislature's infatuation with these ventures has been described by James S. Van Ness as follows:

> Ironically, the two sleeping giants secured state financial support by employing almost opposite appeals. Time after time, the C & O Company pleaded an insufficiency of capital to keep construction going, noting that until at least Georgetown and Cumberland could be connected, no revenues worth mentioning would accrue. In contrast, less than two years after construction began on the railroad, trains were running between the city [of Baltimore] and Ellicott Mills, generating a modest income. By the spring of 1832, the railroad had reached the Potomac River at Point of Rocks. Systematic expansion of the line promised continually increasing financial returns and more importantly, vigorous economic activity in the vicinity of the roadbed. Both arguments struck responsive chords in Annapolis. Once the legislature invested funds in the C & O Canal Company it was loath to see the project abandoned with the consequent loss of state investments. With promising results by the B & O Railroad Company, possibly increased state support would reap hoped–for rewards more quickly if additional funds went to that institution. Between 1826 and 1840 the state borrowed over ten million dollars to support the two projects. In addition it borrowed another four and one–half million dollars to support the Baltimore and Washington Branch Railroad (later taken over by the B & O), Baltimore and Susquehanna Rail Road, Tidewater Canal, Annapolis and Elkridge Rail Road, and the Eastern Shore Rail Road.[29]

The effect of this massive borrowing was to ruin the state's credit and, ultimately, to render the state insolvent. Even small issues of state bonds sold at a 35 percent discount. By 1840 the annual interest on the state's $15 million debt amounted to over $585,000, for which adequate sinking funds had not been provided. Nor were the revenues from the various improvement projects adequate to defray that cost.

As early as 1839 it had become clear that unless new taxes were levied the state would inevitably default on its debt service obligations. Neither political party, how-

27. Acts of 1837, res. 26.
28. Acts of 1838, ch. 386.
29. Van Ness, "Economic Development," p. 195. Hanna, *Financial History of Maryland,* p. 94, tallies the state's investments in these various projects as follows:

		Form of Investment		
	Amount of State Bonds Issued	Common Stock	Bonds	Preferred Stock
Chesapeake and Ohio Canal	$ 7,194,667	$ 625,000	$2,000,000	$4,375,000
Baltimore and Ohio Railroad	3,697,000	500,000		3,000,000
Baltimore and Washington Branch	500,000	550,000		
Baltimore and Susquehanna Railroad	2,232,045	100,000	1,879,000	
Tidewater Canal	1,000,000		1,000,000	
Annapolis and Elkridge Railroad	219,378			299,378
Eastern Shore Railroad	151,744			86,862
Chesapeake and Delaware Canal		50,000		
Totals	$14,994,834	$1,825,000	$4,879,000	$7,761,240

ever, was willing to accept the responsibility of imposing such levies. Gov. William Grason, a Democrat, proposed a property tax in 1839, but the General Assembly, though controlled by the Democrats, refused to enact it. By 1841, however, time had run out. Without a new source of revenue the state would be unable to meet the interest payments due in 1842.

With its back truly against the wall, the 1841 legislature yielded and reluctantly levied a property tax of 20 cents per $100 of assessable property. The tax created political reverberations in the ensuing gubernatorial election campaign, but from a fiscal point of view it was a case of too little too late. The Democrats charged the Whigs, who they said had controlled the state since 1830, with being profligate; the Democratic candidate, Francis Thomas, accused the Whigs of having "squandered the public money, bankrupted the treasury, and imposed an onerous Direct Tax." It was a legitimate and successful campaign issue. Thomas won the election (by 479 votes), and the Democrats regained control of the House of Delegates.[30]

Unfortunately the property tax did not provide the needed revenues. The assessable base upon which the tax was laid was too small, and thus under the best of circumstances the yield would have been inadequate. Moreover the counties were negligent in collecting the tax. As a result Governor Thomas had to suspend payment of the interest due in January 1842—a suspension that was to last for five years.[31]

With the state now facing bankruptcy, people scrambled for ways to discharge the debt, ranging from new taxes and assistance from the federal government to liquidating the state's investments, severely retrenching governmental expenses, and outright repudiation. In 1843 the General Assembly decided to sell the state's investments in the various transportation projects, believing that $11,700,000 could be obtained for them. In fact, despite advertisements in both European and American newspapers, only one bid for one stock was received, and it was rejected because it was less than the minimum acceptable price.[32]

In an effort at fiscal frugality the legislature reduced the salaries of various state officials, including the governor, abolished other positions entirely, and decided to meet biennially instead of every year. In 1844 a special tax on the state debt itself was imposed. Initially the tax (one–fourth of 1 percent) was levied only on the assessed value of the state debt held by nonresidents, but the following year it was extended to Marylanders as well.[33]

Actual repudiation of the debt was also under serious consideration, although it was never implemented. According to W. Wayne Smith:

> Advocates of repudiation could be found in all counties, but the Harford and Carroll County Democrats seemed most interested in that approach. They intended to make repudiation the Democratic party's solution to the state's financial difficulties. But not all Democrats, and in particular the Baltimore Democrats, would accept repudiation, and the issue threatened to divide the party in the 1843 elections.[34]

In 1846 the General Assembly, responding to Gov. Thomas G. Pratt's request to find new sources of revenue, enacted a stamp tax, which required that specially stamped paper be used for certain legal documents.[35] With this tax and a general improvement in the national economy the fiscal picture brightened, and by mid–1846 the state treasury again had a surplus.

30. Acts of 1841, ch. 23; W. Wayne Smith, "Politics and Democracy in Maryland, 1800-1854," in *Maryland*, ed. Walsh and Fox, p. 290.
31. Smith, "Politics and Democracy," pp. 290-91.
32. Hanna, *Financial History of Maryland*, p. 94.
33. Acts of 1844, ch. 172; 1845, ch. 170.
34. Smith, "Politics and Democracy," pp. 291-92.
35. Acts of 1845, ch. 193.

In his annual message to the General Assembly in 1846, Governor Pratt, a Whig, opined that within thirty years the principal would be repaid from the sinking fund. He noted that if sources of money other than a tax were available to meet interest payments the taxes could be rescinded, and he suggested that the alternative source of funds lay in increasing the profits of the internal improvements into which the state had invested over $15 million and from which it had derived so little.[36]

Even with a rosier financial picture the decision to resume interest payments was not unanimous. According to Smith:

> As with taxation, it was the Whigs who provided the leadership in the resumption policy. Aided by campaign funds from Baring Brothers, the London banking house which had purchased most of the Maryland bonds, the Whigs gained control of the House of Delegates in a relatively quiet state election in 1846. This gave the Whigs a majority of twenty-eight seats and enabled them to elect John Pendleton Kennedy speaker of the house. Kennedy assisted the resumption plans by appointing as chairmen of the committees those who favored the policy. Yet even with Kennedy's expert management and the influence of Governor Pratt, the resumption plans encountered stiff resistance in both Houses. Yet the advocates of resumption won passage of a bill directing the state treasurer to begin paying interest on all state bonds.[37]

In that same 1846 message to the General Assembly, Governor Pratt also noted that aggregate profits from the various investments in internal improvements could not be increased as long as the component public works acted competitively rather than cooperatively. He therefore suggested the appointment of state agents or a board of agents that would not only vote the state's interests but control the improvements based on management criteria set by the General Assembly.[38]

A bill introduced during the 1846 session for appointment of a board of public works to supervise the state's interests in internal improvements received an unfavorable report from the Committee on Internal Improvements. Instead the House adopted an order relating to a board that read, in part:

> Ordered, That the Governor of this State be requested to furnish this house with any information he may possess, as also with his opinions; Whether the present laws are not inadequate for the purpose of securing the largest amount of revenue from the works of Internal Improvements, and whether or not the public interest demands, that some supervision, other than that now provided by law, should be exercised over our public works? Whether a board of public works, clothed with all proper and necessary powers would not be the means of bringing into the Treasury a very considerable additional revenue, and what would be the supposed probable amount of such additional revenue?[39]

The committee subsequently offered a bill that provided for "the election of a board of public works." It also failed. Two further unsuccessful efforts were made to create a statutory board of public works in 1848 and 1850.[40]

During the interim Gov. Philip F. Thomas, a Democrat elected in 1847 to succeed Governor Pratt the following year, lent his support to the creation of such a board. In accord with the views of Governor Pratt, Thomas felt that the taxes should not be rescinded without a comparable increase from other sources. The governor expressed his fiscal policy to the General Assembly as follows: "Allow the system to continue untouched, for, at most fifteen years longer, and Maryland will present the anomalous

36. Thomas G. Pratt, "Annual Message of the Executive to the General Assembly of Maryland," *Maryland Public Documents* (Annapolis, 1846), doc. A, pp. 6-14.
37. Smith, "Politics and Democracy," p. 292.
38. Pratt, "Annual Message," p. 15.
39. *H. Jour.* (1846), pp. 218-19, 241. With respect to these legislative actions, note that the version of Governor Pratt's annual message cited above does not indicate the date of its delivery, except December Session 1846. The committee report was delivered on 6 February 1847. The House adopted this order on 11 February 1847.
40. Ibid., p. 401; (1847), pp. 334, 345, 484; (1849), p. 281.

and enviable spectacle, of a commonwealth liberated from debts, supported without taxation and possessed of an annual surplus revenue of from three to five hundred thousand dollars."[41]

The old dream was not yet dead—a state operating without the need for direct taxation, sustained by investment income.

41. Philip F. Thomas, "Annual Message of the Executive to the General Assembly of Maryland," *Maryland State Documents* (Annapolis, 1849), doc. A, p. 9.

CHAPTER 3

The Constitutional Convention of 1850-1851

For at least twenty years there had been an underlying discontent with the Maryland Constitution of 1776 and a growing clamor for a convention to rewrite it. Reformers had achieved some success in 1837 with a series of amendments providing for, among other things, the direct popular election of the governor, the abolition of the Council and the vesting of all executive authority in the governor, and a restructuring and geographical reapportionment of the General Assembly. But that was not enough. Baltimore City, a burgeoning metropolis, remained underrepresented; slavery (or its abolition) became an increasingly fractious issue; and a number of people, imbued with the spirit of Jacksonian Democracy, felt that too much power was centered in the hands of the privileged few.

Added to these issues, and sharpening the desire for constitutional change, was the fiscal debacle of the past decade and the enactment of the hated stamp tax. In August 1845 a conference of reformers met in Baltimore and urged the formation of committees throughout the state to press for a constitutional convention and to work for the defeat of any candidate to the General Assembly who refused to pledge himself to vote for such a convention. When the next session of the legislature convened in December 1846, a bill was introduced in the House of Delegates to take the vote of the people as to whether they wanted a convention. But after a good bit of wrangling, the bill was committed to the House sitting as a committee of the whole, from which it never emerged. In 1848 the House considered the matter again but rejected it by a vote of 44 to 34. The widespread fear that such a convention might unduly tinker with the institution of slavery proved a major stumbling block.[1]

The debate over a convention became a partisan political issue, especially in the 1848 gubernatorial campaign. Philip F. Thomas, a Talbot County lawyer nominated by the Democrats, "accused the Whigs of incurring the huge state debt with 'Utopian schemes of Canals and Railroads' and urged the calling of a constitutional convention to reform the malapportioned state legislature."[2] Thomas was elected, and in his inaugural address he reiterated his call for a convention.

The General Assembly, led by members from the Eastern Shore and southern counties who feared the reapportionment and loss of regional power sure to come from a convention, continued to resist. Not until the 1849 election were reform groups able to cut the Whig majority and elect additional legislators favoring a convention. Finally,

1. See, in general, James Warner Harry, *The Maryland Constitution of 1851*, JHU Studies, ser. 20, nos. 7-8 (Baltimore: Johns Hopkins University Press, 1902), pp. 22, 23; Smith, "Politics and Democracy," p. 293; *H. Jour.* (1847), p. 277; (1848), p. 466.
2. Smith, "Politics and Democracy," pp. 293, 294.

in its 1849-50 session the legislature reluctantly enacted the necessary legislation providing for an election to determine whether a constitutional convention should be called and, if the vote favored a convention, for the election of delegates. The plebiscite was held on 8 May 1850. Although the turnout was light, the voters overwhelmingly opted for the convention.[3]

W. Wayne Smith describes the convention, which assembled on 4 November 1850, in the following terms:

> The convention probably lasted longer than anticipated and became a tedious affair. Absenteeism was high, tempers flared, and men of patience undoubtedly moaned in despair. Still the delegates thoroughly examined all facets of Maryland's government and laws. Questions of representation, gubernatorial powers, budgetary questions, elective judges, restrictions of freedmen and slave—all came under the scrutiny of the convention. Given the scope of their task, and sectional tempers and the clash between progressives and conservatives, it is not surprising that the finished document was regarded as a patchwork of compromises. Disappointment with the new constitution was deep, and most delegates accepted it only because they believed it was the best document they could obtain.[4]

Among the major objectives of the convention was ensuring that the state's credit would never again be so ruinously extended as it had been in the previous two decades and that the state would cease being a capitalist and divest itself of its holdings in the internal improvement companies. Thus the convention determined to place in the new constitution a flat prohibition against any further state financial involvement in works of internal improvements, a general ban against the lending of the state's credit to private entities, and a requirement that "so soon as public debt shall have been fully paid off" the legislature should "cause to be transferred to the several counties and the city of Baltimore, stock in the internal improvement companies, equal to the amount respectively paid by each towards the erection and completion of said works, at the then–market value of said stock."[5] In the same context considerable discussion arose as to the proper role of the state in managing, during the interim before their disposition, the internal improvement projects in which it already had a major financial interest.

Part of the impetus for this secondary concern arose from the toll–rate wars in which the C & O Canal Company and the B & O Railroad Company had engaged during the preceding decade. This pernicious rivalry was not only endangering the companies themselves but was causing problems for those dependent on the canal and the railroad and was reducing the return on the state's investment in those enterprises. Each company, and its adherents and supporters, blamed the other for the warfare and the problems it caused.

At the beginning of the convention a motion was made for the Committee on State Debt and Public Works to consider provisions for a board of public works, the president of which was to receive the state's votes for the presidency of the C & O Canal

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3. Acts of 1849, ch. 346; Harry, *Maryland Constitution of 1851*, p. 32; Smith, "Politics and Democracy," p. 295. The vote was 23,423 for, and 4,935 against.
4. Smith, "Politics and Democracy," pp. 296-97. See also Harry, *Maryland Constitution of 1851*, p. 36: "Elements of discord abounded in the convention. Party feeling was very strong, and perhaps to this cause may be attributed in a great measure the difficulties and differences which were encountered in the progress of the session. An entire week was consumed before the convention was able permanently to organize, owing to political division and sectional jealousy."
5. Maryland Constitution (1851), art. 3, secs. 22, 42.

Company.[6] The committee ultimately presented a report to the convention proposing a board of public works consisting of three commissioners—one from the Eastern Shore and two from the Western Shore—elected on a statewide basis. A specific term was contemplated, but the length of it was left blank; the terms were, however, to be staggered. The duties of the board were described in proposed article 3: "The said commissioners shall exercise a diligent and faithful supervision on all public works in which the State may be interested as stockholder or creditor; shall represent the State in all meetings of Stockholders, and perform such other duties as may be prescribed by law."[7]

Before any discussion of the committee report, a substitute was offered by Francis Thomas of Frederick County, which provided for the election of four commissioners, each elected from and by the voters of a specific geographic region.[8] The duties of these commissioners were essentially the same as those prescribed in article 3 of the committee report for the proposed board of public works. In the event the commissioners were unable by reason of a tie to reach a decision or agreement, the state treasurer would cast the deciding vote.

The convention virtually disregarded the committee report after the committee chairman, Daniel Jenifer of Charles County, explained that (1) a number of proposals had been submitted to the committee; (2) "the report came before the Convention, more to discharge a duty which the Committee felt devolved on them by the reference of several plans to their consideration, than from any predilection of their own"; and (3) no member of the committee was pledged to support, in particular, the proposal embodied in the committee report.[9] Thereafter the delegates discussed the issues within context of the Thomas substitute.

The seminal issue was, of course, whether to create a new, separate, and popularly elected board of public works or group of commissioners as an integral part of the state government to supplant the existing system of state agents appointed by the legislature.[10] The convention committee squarely faced this basic issue and opted for a new elected board. When questioned about the decision, Jenifer called attention to the recommendations from governors Thomas G. Pratt and Philip F. Thomas to the 1846 and 1849 sessions of the legislature.[11]

The Thomas proposal, involving four regionally elected commissioners, faced the issue somewhat less squarely. Although calling for a "board of commissioners," Thomas made clear his opposition to the concept of a board of public works and drew what he considered a significant distinction between Maryland and other states having such boards. Those states, he noted, actually owned internal improvement projects. They were public enterprises, and the principal function of the board of public works was to exercise the state's clear prerogative of direct managerial control—to take, in effect, the place of officers and boards of directors. Maryland's situation was different. The state did not own the projects but was merely a stockholder and/or creditor of the

6. *Reform Convention Debates,* 1:114. It is significant that the convention paired these two topics—state debt and public works. As noted by Smith and Harry (note 4 above), the convention was fractious and difficult to organize. That included the selection of committees. Yet most of the proposals, in one manner or another, placed both of these issues in the same committee. See *Proceedings of the Maryland State Convention to Frame a New Constitution* (Annapolis, 1850), pp. 52, 60, 61 (hereafter *Maryland State Convention Proceedings*).
7. *Maryland State Convention Proceedings,* p. 248.
8. *Reform Convention Debates,* 2:220. Thomas had been governor from 1842 to 1846. He had also been president of the C & O Canal Company and, at the same time, a member of the U.S. Congress. He is not to be confused with Philip F. Thomas, who served as governor from 1848 to 1851.
9. Ibid., p. 390.
10. In 1832, as previously noted, the legislature directed the governor and Council to appoint three agents to represent the state's interest in the various companies in which it had an interest at all stockholders' meetings. When the debacle hit in 1840-42, that arrangement was continued, but the legislature made the appointments itself, removing that power from the governor. See chapter 2; Acts of 1832, ch. 318; 1840, ch. 155; 1841, ch. 290.
11. *Reform Convention Debates,* 2:390. See also chapter 2.

companies that did. It therefore could not exercise management over the actual operation of the projects but was limited merely to casting its vote as stockholder.[12]

While Thomas preferred a stronger supervision of the state's investments in internal improvements, he saw no reason why such supervision could not be exercised through continued use of salaried agents, thus avoiding the unnecessary expense of a new board of public works. Formerly the agents were paid a flat annual salary of $100 each, as set by the legislature, for performing their limited role.[13] Their salaries would have to be raised if a board were to assume the task of directly managing the various projects in which the state had an interest. Except for salaries, however, the essential change in the existing system made by the Thomas proposal was the popular election by district of the state's agents or the commissioners.

Samuel P. Smith of Allegany County opposed not only the committee's proposal but Thomas's as well. Smith had been a director of the C & O Canal Company at a time when the state agents had a concurrent jurisdiction with the directors in assuring completion of the canal, and he had found their task to be an arduous one. Now that the canal had been completed, he said, the agents had no duty other than to attend the annual stockholders' meeting and cast the state's vote. "They can have no supervision over the work," he said, "because the charter gives the entire control to the President and Directors"; thus he felt that the legislature was as competent to select the people to perform that function as the general electorate.[14]

George Schley of Washington County also picked up this critical theme. "It would be a misnomer to call this a board of public works," he exclaimed, "when there were no public works to be constructed, and when the constitution which we are now framing absolutely forbade any future public works."[15] The state's agents performed their limited duties faithfully and punctually, and he saw no compelling reason to change that system.

The debate over the board, as these comments illustrate, centered on the question of whether such an entity was really necessary, but other considerations, of a more political nature, were also involved. An undercurrent of both sectional and partisan rivalry was very much in evidence when the committee proposal and the Thomas substitute were discussed and compared. Ezekiel F. Chambers of Kent County, for example, noted that under the Thomas proposal the representation of the entire Eastern Shore was but 25 percent—one of four—whereas under the committee proposal its voice was one of three; and he objected to this "fritter[ing] away, by piecemeal, the remnants of our political privileges."[16]

Thomas Harbine of Washington County attempted to answer some of the concerns expressed, particularly the political ones. Party considerations should be disregarded, he said. Although it might be supposed that at that time two of the districts (Eastern Shore and southern Maryland) might elect Whigs, and Baltimore City and the western area would elect Democrats, who could say what would be the case in five or ten years? The looming national crisis was changing the political scene—"absorbing old parties and creating new ones."[17] No area with but one vote would dominate another, much less the whole state, especially under the Thomas proposal.

12. *Reform Convention Debates,* 2:392.
13. Acts of 1841, ch. 290.
14. *Reform Convention Debates,* 2:397. This and the succeeding remarks of George Schley of Washington County (see note 15 below) were in response in part to comments made by William Merrick of Charles County. Merrick's remarks unfortunately are not recorded, but from the response to them it appears that he suggested a provision allowing the legislature directly to elect the president of the C & O Canal Company.
15. *Reform Convention Debates,* 2:398. This referred, of course, to what became part of art. 3, sec. 22, of the 1851 Constitution, which removed from the General Assembly the power to involve the state in the construction of internal improvements or in any enterprise involving the faith or credit of the state.
16. Ibid., p. 394.
17. Ibid., p. 400. Harbine perhaps did not realize the degree of his prescience. Within five years the Whig party had all but disappeared as a political force. It was replaced by the American party, or Know–Nothings, which held sway until 1860 and in turn was replaced by the Union party. See chapter 4.

Harbine did not deem it important that the state was a mere stockholder rather than an outright owner in public works, especially in light of the state's position as *majority* stockholder in the C & O Canal Company. Nor did he see any harm in providing only general duties for the board. "It must be recollected," he observed, "that we are now making a Constitution, not a set of laws, and in doing this all that would be required, is to give the outline, the general principle, leaving all detail to the Legislature."[18]

Elias Brown of Carroll County took issue with the contention of Smith and Schley that the appointment of the state's agents was best left to the General Assembly. He had no fear of popular election of these officials, and indeed he thought it preferable. He did not want to leave "any patronage whatever in the hands of the Legislature—none—not in the smallest degree" as, in his opinion, "it would have a corrupting and baleful tendency." Schley immediately replicated that the appointment of agents was not really much patronage, since all they would do is vote the stock.[19]

William Tuck of Prince George's County pointed out that, whether by design or coincidence, the governance of the C & O Canal Company seemed to follow political changes in the state. "This unfortunate company for years has been a prize," he observed, "and subject of contention between the great parties." Perhaps upon the naive assumption that such political motives were anathema to the legislature, he feared the elective process as being too strongly influenced by partisan considerations and thus was content to leave the entire matter to the General Assembly. He therefore opposed both constitutional propositions. Moreover, he said, "this Constitution had now full weight enough—more probably then it could carry through the race it was to run on the political course."[20]

Also speaking at length in support of the existing system was Allen Davis of Montgomery County. Davis was no stranger to the issues at stake; not only was he one of the five incumbent state agents appointed by the legislature (two others also served as delegates to the convention), but he had recently served as agent and trustee for contractors doing work on the C & O Canal. He also pointed out the limited function to be served by a board that merely voted the state's stock. Any attempt at a deeper intrusion into the affairs of the companies or the operations of the projects would be resisted as the corporate directors and officers would look to the corporate charters for their authority.[21]

After considerable wrangling over the reasons for the enormous cost overruns in completing the canal and the railroad, Benjamin C. Howard, a delegate from Baltimore County and one of the original promoters and organizers of the B & O, offered an amendment to the Thomas proposal designed to curtail some of the pernicious price warfare between the canal company and the railroad. His amendment, ultimately adopted, authorized the board to appoint the directors "in every railroad or canal company in which the State has the power to appoint directors" and also "to review, from time to time, the rate of tolls adopted by any company, and use all legal powers which it may possess, to obtain the establishment of a rate which may prevent an injurious competition with each other, to the detriment of the interests of the Treasury of the State, and report their acts annually to the Legislature." Howard had moved the amendment earlier in the debate but had been ruled momentarily out of order.[22]

Responding to a sharp retort from Davis and to the suggested impotence of the proposed board, Howard observed that the state already had control of the major companies—the C & O Canal Company, the B & O Railroad Company, and the Susque-

18. *Reform Convention Debates,* 2:401.
19. Ibid., p. 402.
20. Ibid., p. 405.
21. Ibid., p. 408. See also Sanderlin, *Great National Project,* pp. 157-58.
22. *Reform Convention Debates,* 2:413, 402.

hanna Railroad Company. It appointed a majority of the directors "and thus could appoint all the officers and have the control of everything else."[23] As to those companies where the state did not have such *direct* authority, Howard opined that under its general police power the state "had the right to see that no chartered company holding under their laws, inflicted injury instead of benefit upon the community." Those companies were therefore *not* beyond all state control. The moment a corporation became a nuisance instead of a benefit, he said, "the State had a right to pass necessary laws to bring back that company into a faithful performance of that duty." Those laws could be enforced if necessary, he added, by proceedings to forfeit the charter.[24]

The debate dragged on the rest of that day, 15 April 1851, and much of the next, largely among delegates Davis, Schley, Howard, and Thomas Beale Dorsey of Anne Arundel County. Most of the time was taken up by a monologue delivered by Dorsey, then chief judge of the Court of Appeals, whose speeches constitute more than thirteen pages (of very small print) in the convention debates. Judge Dorsey, a strong advocate of the Thomas proposal, pointed out that it involved more than a mere transfer of the duties presently committed to the state agents. In addition to attending stockholders' meetings, the board would be charged with exercising a diligent supervision over all public works in which the state had an interest as a creditor and with performing "such other duties as may be required by law." He envisioned personal inspections and inquiries by the commissioners and the urging, to the extent of their power, of "such changes in the operations of the companies, the construction of such new works, or completion or discontinuance of old ones, the appointment of other and better engineers and officers, if occasion required it, the reduction or increase in the number of officers or agents in the service of the companies, or of their salaries or compensation." Indeed, he said, their duties were to do everything "to the extent of their influence and authority, to carry out the designs of the legislature in the creation of those companies."[25]

Dorsey then turned to the political issue, which he assumed to be the important one. A majority of the convention delegates (55 of 103) were Whigs. Moreover, the five current state agents were all apparently Whigs, and Dorsey discerned an underlying suspicion among the Whig members of the convention that if a new body were to be popularly elected its members might be Democrats. He regretted, he said, that the Thomas proposal "was regarded by the whigs of this body as a political device, resorted to by the opposite party, for partizan purposes."[26] Such a suspicion, he said, was wholly unwarranted. Indeed the likelihood was, as Harbine had earlier suggested, that the election would produce two Whigs and two Democrats with the treasurer casting a tie-breaking vote. As for the treasurer, an official to be elected by the General Assembly, Dorsey argued that:

> from the nature of his office and his incessant occupation in the discharge of its duties, [he] would be so far withdrawn from the politics of the day, that should any question of party politics ever arise between the commissioners, which he could not expect from the nature of their duties, it cannot but be apprehended that his umpirage will impartially and justly adjust the controversy between them.[27]

23. Ibid., p. 414. This was true with respect to the C & O Canal Company, but not the B & O Railroad Company. The state was entitled to appoint but ten of the thirty directors in that company, with Baltimore City appointing eight and the private stockholders electing twelve.
24. Ibid.
25. Ibid., p. 428.
26. Ibid. Dorsey was apparently a Whig himself, for after discoursing a bit on the proper limits of partisanship, he "expressed regrets that whispers of his political friends around him, too audible not to have reached his ears, had informed him that he was not, by them, any longer regarded as a whig, but as one who had gone over to the enemy." He utterly rejected such a suggestion and asserted that he was merely "faithfully discharging a positive duty." Ibid., p. 429.
27. Ibid., p. 428.

Finally, in response to the arguments of Schley and Davis that the existing state agents were fully competent to represent the state's interests, Dorsey noted that while the current agents were all honorable gentlemen, he was at a loss to understand some of their actions. He accused them in particular of being too deeply involved with the C & O Canal Company and therefore biased against the B & O Railroad Company, which worked to the detriment of Baltimore City. Their conduct was, he said, "inexplicable." They identified themselves with the canal project, "regarded it as measurably their work, and in indulging their partialities and self congratulations, they in a great measure lost sight of the fact that the State had other interests which required their consideration."[28]

Davis felt compelled to respond, and in doing so he pointed out some additional political realities. A canal created a great deal of employment—a lot of boats and a lot of employees. "Here was, then, an army, a sufficient field for political operations," he said, as Thomas well knew, but which Judge Dorsey may have overlooked. While Thomas was president of the canal company (and concurrently a member of Congress), Davis suggested, he saw to it that some two thousand of his supporters were employed on the canal project. As long as political parties continued, Davis observed, "this must necessarily be a political board," and, later turning to Judge Dorsey, he asked, "Does not my friend from Anne Arundel see what an engine of political power the control of this canal will give the gentlemen [Thomas] from Frederick?"[29]

There was more than a grain of truth to Davis's suggestion that the canal company had been used as a political plum. Sanderlin states:

> Along with Maryland's financial support had come state control of the enterprise. Domination of the canal company in turn had brought about the conditions which made possible political interference in the operation of the waterway. At an early date it became the practice of the state parties to use the numerous positions on the waterway to reward loyal supporters. Soon each alteration in the political control of the state brought sweeping changes in canal personnel. The cohorts of the outgoing party were removed, and friends of the incoming group appointed. Thus both the officials and the employees of the company became closely connected personally and spiritually with the political complexion of the state.

Dorsey later answered that he saw no connection between the political character of the board and the boatmen using the canal.[30]

The question then turned to the Howard amendment, which would allow the board to review toll rates. Thomas F. Bowie of Prince George's County, who opposed putting any of this in the constitution, suggested that unless the board had the power to *change* the tolls, which everyone agreed it could not have, the right to *review* the tolls was meaningless. There was no response to this observation, and, after some further debate on other matters, the convention adjourned for the day. Just prior to adjournment, however, Ramsey McHenry of Harford County gave notice that at the proper time he proposed to offer a substitute for the report. His proposal would be that "the Governor, Comptroller and Treasurer shall constitute the commissioners of the public works and property for this State."[31] At some point McHenry must have changed his mind, however, for he never actually offered the amendment.

The debate came to a head when proceedings resumed the next day, 16 April 1851. Judge Dorsey offered a series of amendments to the Howard amendment to the Thomas proposal (the Howard amendment, as previously noted, being that which authorized the board to exercise whatever power the state had to appoint directors in the railroad and canal companies, to review the tolls "adopted by any company," to use the powers

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28. Ibid., p. 436.
29. Ibid., p. 443.
30. Walter S. Sanderlin, "A House Divided: The Conflict of Loyalties on the Chesapeake and Ohio Canal, 1861-1865," *Maryland Historical Magazine* 42 (1947): 207; *Reform Convention Debates,* 2:445.
31. *Reform Convention Debates,* 2:445, 446.

it had to prevent "injurious competition," and to report annually to the legislature). The Dorsey amendments, which were accepted by Howard, (1) qualified the power to appoint directors by adding the phrase, "where such power can be constitutionally exercised," and (2) allowed the board to report to the legislature "annually or biennially as the case may be";[32] (3) set as the criterion with regard to reviewing tolls the "interests of the State" instead of the "interests of the treasury of the State"; and (4) required the board to keep a journal of its proceedings and "if they deem it necessary to recommend such Legislation as they shall think requisite to promote or protect the interests of the State in the Public Works hereinafter mentioned."[33]

Following this and some additional sparring with Dorsey, Davis succeeded in adding to the Howard amendment, against Howard's wishes, a requirement that "in the adjustment of tolls, due regard shall be had so to adjust them as to promote the agriculture of the State." With these amendments the Howard amendment itself was adopted by a close vote of 38 to 36.[34]

After rejecting a number of other proposed amendments as not being timely offered (the previous questions having been called), the convention approved the Thomas substitute, as amended, by a somewhat greater margin and then formally adopted it as the committee report. In a "last ditch" effort Schley moved to reconsider the vote and to substitute a proposal for the popular election of three state agents—one from the Eastern Shore and two from the Western Shore. His motion was tabled, as were two others by William H. Tuck and Curtis W. Jacobs dealing with the salary to be paid the commissioners.[35]

The vote on the Thomas–Howard proposal was largely regional. Although a number of delegations were split, most of the delegates from the western and central subdivisions voted for the proposal, whereas the southern counties were solidly against it, as were most of the Eastern Shore delegates. The final provisions adopted by the convention became sections 1, 2, and 3 of article 7 of the 1851 Constitution (Sundry Officers). In summary they:

1. provided for the election, by district, of four "Commissioners of Public Works";
2. created for that purpose four districts: the First District comprising Allegany, Washington, Frederick, Carroll, Baltimore, and Harford counties; the Second District, Montgomery, Howard, Anne Arundel, Calvert, St. Mary's, Charles, and Prince George's counties; the Third District being Baltimore City; and the Fourth District the entire Eastern Shore;
3. provided four–year semistaggered terms for the commissioners, with two of the initial members serving for two years and two for four years, any midterm vacancies to be filled by the governor with the advice and consent of the Senate;
4. authorized and directed the state treasurer to break a tie vote among the commissioners "on any subject committed to their charge"; and
5. charged the commissioners with the following responsibilities:

32. This was evidently in reference to the convention's determination to limit the General Assembly to biennial sessions after a transitional period of annual sessions. Art. 3, sec. 7, of the constitution proposed by the convention (and later ratified by the people) provided for annual sessions in 1852, 1853, and 1854, and thereafter for biennial sessions.

33. *Reform Convention Debates,* 2:446. See also note 22 above.

34. *Reform Convention Debates,* 2:448, 449. Davis's amendment was by no means an afterthought. The C & O Canal Company initially relied on agricultural trade but soon recognized the need to stimulate other forms of commerce as well, principally mining and manufactured goods. It tried to do this by categorizing and manipulating its toll rates. In 1841, for example, it increased the rates for agricultural products. To the extent that the new board would have anything to say about toll rates, the agricultural interests wanted some assurance that they would not be disadvantaged. See, in general, Sanderlin, *Great National Project,* pp. 189-91.

35. *Reform Convention Debates,* 2:449-52. The three proposed sections of the Thomas proposal were voted upon separately. Art. 1 concerning the creation and duties of the board was approved by a vote of 40 to 34; art. 2 regarding residence requirements of the commissioners passed by 47 to 31; and art. 3 establishing election by district and terms passed by a similar vote of 47 to 31.

a) to exercise a diligent and faithful supervision of all public works in which the state was interested as stockholder or creditor,
b) to represent the state in all meetings of stockholders,
c) to appoint the directors in every railroad or canal company in which the state had the constitutional power to appoint directors,
d) to review the toll rates "adopted by any company" and to use "all legal powers which they may possess" to obtain rates that could prevent an injurious competition with each other to the detriment of the state, and to adjust them to promote the agriculture of the state,
e) to keep a journal of their proceedings and to make a report to the legislature at each regular session,
f) to recommend such legislation as they deemed necessary to promote or protect the state's interest in the public works, and
g) to perform such other duties as may be prescribed by law.

The convention finished its work and faded into history on 13 May 1851, and, although its product was not particularly popular, little time was lost in breathing life into it. The Constitution was submitted to and approved by the voters on 4 June 1851—barely three weeks after the close of the convention—and it took effect 4 July 1851. The first General Assembly, and the first Commissioners of Public Works, were elected under the new Constitution in November 1851.

CHAPTER 4

The Reign of the Commissioners: 1851-1864

With the new state Constitution and the new Commissioners of Public Works, a certain amount of organization was, of course, necessary. After considerable parliamentary maneuvering, the legislature finally enacted a bill providing for an annual salary of $200 for each commissioner, but, because it neglected to include funds for that purpose in the annual appropriation bill, the commissioners, in fact, remained unpaid until the following year.[1] Leave was given to the House Committee on Internal Improvements to report a bill providing the commissioners with an office and a clerk, but such a measure does not appear to have been introduced. It certainly was not passed. No office was in fact provided, and so the commissioners were required to meet in various hotels and private offices. The legislature did, however, provide a procedure for their taking the required oath of office.[2]

Despite its niggardly attitude in terms of an office and staff, the General Assembly had no hesitation in promptly adding new statutory duties for the commissioners. In 1852 the legislature amended the charter of the Cumberland Coal and Iron Company to permit it to construct or purchase railroads in Allegany County. In doing so the General Assembly provided that any dispute in regard to "locating, constructing or working its rail road or rail roads, or in respect to the charges for transportation thereon . . . shall be submitted to, and be decided by the Commissioners of Public Works." The act also reserved to the state and to the companies incorporated by it the power to connect into Cumberland's railroads "in such manner that, in the opinion of the Commissioners of Public Works of this state, no injury will be done by such connections."[3]

What makes this act particularly interesting is that the state was neither a stockholder nor a creditor of the company. In the preamble, the legislature simply recognized the value of its operations to the internal improvements of the state, and that alone seemed to form the basis of its broad delegation of arbitral authority to the commissioners. In that limited context, at least, this represented a rather more expansive view of their function than had been apparent in the Constitutional Convention.

The first commissioners were John S. Gittings (First District), Charles R. Stewart (Second District), William P. Ponder (Third District), and John R. Franklin (Fourth District). They first met on 8 December 1851 in Gittings's office, where they took the

1. The salary was established by Acts of 1852, ch. 122. See also Acts of 1853, ch.139, appropriating the salary for the current and the prior year.
2. *H. Jour.* (1852), p. 153; Acts of 1852, ch. 172, sec. 3.
3. Acts of 1852, ch. 93, secs. 8, 5.

oath of office, decided by lot that Stewart and Franklin would have the initial four-year terms, and elected Franklin president. The only substantive action taken was adoption of a resolution requesting the various railroad and canal companies in which the state had an ownership or creditor interest "to furnish this Board with the tariff of tolls charged by them respectively upon the transportation of merchandise and passengers."[4]

At its next meeting, held at the Chesapeake Bank in Baltimore on 19 and 20 February 1852, the board selected the state directors in the Baltimore and Ohio, Baltimore and Susquehanna, and Annapolis and Elkridge railroad companies. The state, under the various statutes, had the right to select ten directors of the B & O, five directors of the Baltimore and Susquehanna, and three directors of the Annapolis and Elkridge. Three of the four commissioners offered slates, and, except for the Annapolis and Elkridge, it took two ballots to obtain the necessary three votes for the full complement of directors.[5]

The journal of proceedings shows no further meetings of the board until 6 April 1854—a hiatus of nearly twenty-six months. This is most likely a clerical lapse, however; the board's 1853 report to the legislature stated that in June 1852 the commissioners attended the annual meeting of C & O Canal Company stockholders and in March 1853 they met to elect directors of three railroads.[6] There are eight blank pages in the journal between the February 1852 and April 1854 meetings, and one may presume that they were set aside for the minutes of the two meetings in between, which were simply never written.

The board's laxity extended beyond the keeping of minutes. It was also derelict in making its constitutionally required report to the General Assembly. During the 1853 session Sen. Nathaniel Williams of Baltimore City introduced an order requiring the board to make its report. Further action was deferred, however, at the sponsor's request. The board ultimately filed a report on 11 May 1853, at the conclusion of the legislative session.[7]

The first report recited the organization of the board and its initial appointment of directors in the three railroads. These directors served until 14 March 1853, at which time, according to the report, the board chose their successors. As noted, there are no minutes of such a meeting in the official proceedings of the board. The incumbent directors of the Baltimore and Susquehanna and the Annapolis and Elkridge railroads were reappointed by the board, while four changes were made in the B & O directors. Reflecting on their role with respect to the railroads, the commissioners stated:

> The interest of the State in these works does not entitle her to a majority of the directors in their several boards, and consequently, their management, to a great extent, is beyond her control. Although we are required, from time to time, to review their rate of tolls, we

4. Proceedings of the Board of Public Works, 8 December 1851, vol. 1851-83, p. 1. The proceedings and minutes of the commissioners and the successor Board of Public Works from December 1851 through October 1905 are compiled in two bound volumes (1851-83, 1883-1905) in the collection of the Hall of Records, MdHR 12683, MdHR 7983 respectively. Minutes of board meetings from April 1904 to the present are in the board's current office in Annapolis. The Hall of Records has microfilm copies (M384-M388) of these records from March 1904 through August 1958 (vols. 1-13) and folders of materials (unpaginated) for meetings after that date. The unpaginated materials include minutes of board meetings from January 1958 through May 1978 (MdHR 40281-1/359), transcripts from March 1974 through May 1978 (MdHR 40328-1/100), tape recorded proceedings from February 1973 through May 1983 (MdHR 40369-1/800), and subject file from 1876 to 1970 (MdHR 40242-1/9-40338-1/17). Hereafter all references to the proceedings or minutes of the commissioners or the board will be cited as BPW Minutes, together with date, volume designation, and page number or numbers when possible. As materials for meetings after January 1958 are unbound, citations also include accession numbers for the file folders.

5. BPW Minutes, 19-20 February 1852, vol. 1851-83, pp. 2-6. Two of the directors named to the B & O (Benjamin C. Howard and Michael Newcomer) had been delegates to the 1850-51 Constitutional Convention. So had two directors of the Chesapeake and Ohio Canal Company. William Grason, a former governor (1839-42) and a delegate from Queen Anne's County, was appointed as president, and James Fitzpatrick, a delegate from Allegany County, was made a director.

6. *S. Jour.* (1853), doc. J, p. 4.

7. Ibid. (1853), pp. 260, 367.

could do little else than suggest such changes as we might deem advisable. It is proper, however, for us to say, that no occasion has arisen in which we have felt it our duty to interfere with their established rates.[8]

Dealing then with the affairs of the C & O Canal Company, the report noted that the commissioners attended a meeting of its stockholders on 7 June 1852, received a report from the president and directors, and elected six directors. The commissioners thereafter approved a reduction in tolls on the canal for lumber, lime, cement, and straw, but refused to sanction a reduction for coal on the premise that it "could not fail to injure the revenues of the Canal, and consequently be detrimental to the interests of the State."[9]

The major part of the report was in the nature of a plea to the legislature to define more precisely the duties of the board and to give it the wherewithall to carry out its constitutional functions. The commissioners stated:

From the above report of our proceedings, it will be seen, that we have confined ourselves to the duties plainly prescribed in the first section of the seventh article of the Constitution. That section, no doubt, was intended by its framers as a mere skeleton to be filled up—a foundation upon which a system would be erected by the Legislature,—it contemplated that the duties of the Commissioners should be more fully defined, and their powers made commensurate therewith. This action on the part of the legislature, we did hope would have been taken at its first session after the adoption of the Constitution, but other and probably more important matters seemed to occupy its attention, and the efficient organization of the Board of Commissioners of Public Works, was passed over. Now, whether this indicates a settled conviction, on the part of your Honorable Body, that such a Board as is contemplated by the Constitution, will be powerless to promote the interest of the State in her public works, and a consequent design to withhold any Legislative action by which energy and vitality will be imparted to it, or whether it is a mere postponement of the subject to other and more demands upon your attention—the effect upon us has been equally paralyzing. At every step, we have been painfully embarrassed by the vague and general terms in which our powers and our duties are defined.[10]

Continuing in the same vein, the commissioners noted that they were charged with exercising a diligent and faithful supervision of all public works in which the state may be interested as stockholder or creditor:

This is a most responsible and arduous trust, but the power to discharge it satisfactorily to ourselves, or to the public, is withheld,—the means of acquiring information, of enforcing any line of policy we may deem it advisable to adopt, or of controlling, in any degree, the action of those who manage the public works, is no where given. The only sources of information open to us are open to the world, and were we to undertake to make an exposé of the affairs of any company, we could only do so by stating the facts which they choose to publish, and which reach your Honorable Body equally with or without our intervention. That the framers of the Constitution intended the Commissioners of Public Works to exercise a personal supervision—to make their reports from a personal examination of the works themselves, and to acquire a knowledge of the condition of the several companies, from a direct participation, to some extent in their affairs, we think, can scarcely be doubted. And yet, to accomplish this, the mode and the power must be prescribed in detail by the Legislature.[11]

The experience of the last year, the commissioners noted, had demonstrated the propriety of committing the state's interest in public works to a "body like that contemplated in the Constitution, entirely disconnected from any individual company." But to make it effective, they argued, the board should have "full power to examine the management of any of the works, and to act promptly and energetically whenever the interest of the state might require it." Moreover, the board should be the exclusive channel by which all information should reach the legislature and "its right arm for

8. Ibid., doc. J, pp. 3, 4.
9. Ibid., p. 4.
10. Ibid., pp. 5-6.
11. Ibid., p. 6.

the correction of abuses and the prevention of frauds." The state "should be at all points wherever her interest required her presence, and should be cognizant of every operation which could affect her as a stockholder or a creditor."[12]

Finally, the report concluded:

> It is idle to expect this from the lifeless, skeleton body created by the Constitution. The Legislature must mould it into form and symmetry. Until then, the Commissioners of Public Works will be a dead letter in the Constitution, discharging, it is true, the specific duties marked out for them, but with little satisfaction to themselves and no usefulness to the public.[13]

This rather strong language was quite remarkable in a number of respects. For one thing, despite the plea for adding flesh to what the commissioners perceived as only skeletal constitutional powers, substance only the General Assembly could provide, the entreaty to the legislature was prefaced, in the report, by the commissioners' statement that, "We do not now recommend any legislation which we deem 'necessary and requisite to promote or protect the interest of the State in the Public Works.'" What, then, did they want?

The report contained only three specific requests: (1) a fixed place to hold meetings, (2) "the means of properly preserving the journal we are required to keep," and (3) means to ensure that the commissioners be "furnished with the Laws of the State, and with the charters and official documents of the several companies in which the State is interested."[14] With all of the rhetoric about the board's impotence, those were the only specific requests made of the legislature.

The commissioners' perception as to what the Constitutional Convention intended the scope of the board's authority to be is not totally supported by the debates in the convention, and the legislature's reluctance, if there was any, to specify or enlarge the board's duties would not have been necessarily inconsistent with the convention's intent. In particular, the statement in the commissioners' report that the framers intended them "to exercise a personal supervision—to make their reports from a personal examination of the works themselves, and to acquire a knowledge of the condition of the several companies, from a direct participation, to some extent in their affairs" finds only mixed support in the debates.[15]

Furthermore, in deprecating their authority the commissioners appeared to ignore their real potential for both information gathering and management influence with respect to the internal improvement companies. They voted the majority stock in the C & O Canal Company and thus selected all of the directors and, through them, the officers and employees of the company. Every important aspect of that company's affairs could ultimately be controlled by the board. In the B & O, the board selected ten of the thirty directors, Baltimore City having the power to select eight and the private stockholders twelve.

Notwithstanding their mention of the need to preserve the journals of board proceedings, the commissioners also neglected to mention that no minutes had been kept of any meetings after February 1852, although such meetings were, according to their report, actually held.

Since the commissioners' report was filed at the conclusion of the 1853 legislative session, there was no opportunity for the General Assembly to act upon any of the points raised, and the 1854 session of the legislature declined to take any action with respect to the board.

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12. Ibid.
13. Ibid.
14. Ibid.
15. See chapter 3. Dorsey, it will be recalled, envisioned a broad and direct supervisory role for the board, but Thomas, Schley, Harbine, Tuck, and Howard saw the board's supervisory function being exercisable only through the voting of stock and, where permitted, the direct appointment of officers and directors.

In November 1853 the terms of Gittings and Ponder expired, and Joshua R. Nelson and Moore N. Falls were elected to succeed them. Both men had served, by virtue of appointment from the previous board, as directors of the Baltimore and Susquehanna Railroad. Apparently Franklin, the commissioner from the Fourth District, had died or resigned, and Samuel Chamberlain was appointed to succeed him.

On 7 March 1854 Charles R. Stewart, the sole survivor from the initial board, submitted a brief report to the General Assembly. He pointed out that the board had held several meetings since the previous May to elect directors of the various companies and had declined to instruct the C & O Canal Company to issue bonds to discharge the debts of one of the contractors on the canal. He concluded the report with a polite suggestion that the legislature consider the suggestions made in the commissioners' first report.[16]

As noted, there is no indication in the board's journal of any further meetings until 6 April 1854, at which time the board elected directors of the three railroads. For reasons not specified in the minutes, the board made wholesale changes in those directors. Of the ten state–designated directors of the B & O, only two incumbents (George Brown and Howard Kenedy) were reappointed. John S. Gittings, a former commissioner from the First District, was appointed to the B & O board. None of the incumbent directors of the Baltimore and Susquehanna survived, and two of the three incumbent state directors of the Annapolis and Elkridge were replaced. The minutes of the 6 April meeting state that the board was to meet again in June at the annual meeting of C & O Canal Company stockholders, but no minutes of the meeting survive. The journal contains two blank pages, presumably reserved for such minutes.[17]

The next recorded meeting of the commissioners was on 2 November 1854, at which time the board filled a vacancy in the directorship of the C & O Canal Company and the B & O Railroad Company. It also authorized Falls and Stewart "to act in behalf of said board in representing said state in all the meetings of the stockholders of the several companies of internal improvements in which said state is interested as a stockholder or a creditor." Two more meetings were held in December 1854 for the purpose of selecting directors of the Northern Central Railroad Company and filling a vacancy on the board of the B & O.[18]

By 1852 a significant improvement in the state's overall financial picture had occurred. Not only had repudiation of the state debt been avoided, but a surplus of over $300,000 had been accumulated in the state treasury. In fact, Gov. Enoch Lowe, in his address to the 1852 General Assembly, recommended repeal of the stamp tax. He told the legislators that all of the state's "ordinary and extraordinary demands" had been met, that the interest accruing on the state debt had been paid, and that over $1 million had been paid into the sinking fund. His concern, in fact, was that these funds were not being invested.[19]

In this same address the governor also gave a glowing report as to the condition of the state's internal improvements. He assured the General Assembly that "the public works of the State are in a flourishing condition, by comparison with former years." Indeed, the figures Lowe recited showed that the state had been averaging more than $250,000 a year since 1849 from interest and dividend income on its investments, a significant increase over the prior years. He was convinced that the economic health of the railroad and canal companies was important to the state's

16. *S. Jour.* (1854), pp. 312-13.
17. BPW Minutes, 6 April 1854, vol. 1851-83, p. 15.
18. Ibid., 2 November, 11 December 1854, pp. 18-19.
19. *S. Jour.* (1852), doc. A, p. 26.

overall financial condition, and he gave an exhaustive account of their activities. Gov. Philip F. Thomas's prediction three years earlier of a solvent state meeting a goodly share of its ordinary expenses from investment income appeared to be coming true.[20]

Turning his attention to the toll wars between the B & O and the C & O, Governor Lowe said that he tended to regard the "injurious rivalry" with respect to the coal trade as a "phantom" but would leave that matter to the Commissioners of Public Works. He hoped the time would come "when the natural laws of commerce will obviate all necessity for the interposition of the [commissioners] between these two great companies."[21]

Gov. T. Watkins Ligon, elected in 1853, also recognized the importance of internal improvements, but he was somewhat more cautious as to the proper role to be played by the state in superintending them. In his 1854 inaugural address he stated:

> The control of these vast interests has been by the Constitution devolved principally upon a coordinate branch of the government—the board of commissioners of public works. Their wisdom, I am sure, will plan out the course best to be pursued in their management and full disposition. . . . The result of some of these enterprises which the State has liberally fostered, has not been such as was by many anticipated when the credit of the State was loaned for their construction. Yet, on the other hand, it may be remarked that the benefits accruing to the State should not be measured by the direct profit or loss upon actual investment, or the amount of revenue annually derivable to the Treasury on their account. The State is the gainer wherever the result has been an increase in the extent and facilities of trade, because the value of the property of the State is thus increased, and the basis of the taxation, which is its legitimate source of revenue and power, correspondingly enlarged. This is, perhaps the chief end to which the State should mainly take in her relations to these works. It may, indeed, be gravely considered whether any connection with such works is desirable by the State, other than such supervisory power as may be necessary to preventing abuse or misapplication of corporate privileges.[22]

The Commissioners of Public Works held three meetings in 1855, and for the first time it appeared to be paralyzed by an internal split. On 5 March it met to select the ten state directors of the B & O. Eight candidates received the necessary three votes, but the voting for the other two positions deadlocked in a two–to–two tie on each of the four nominees. As a result, the selection of the remaining two directors was made by the state treasurer pursuant to article 7, section 3 of the Constitution.[23]

Tie votes occurred again on 4 June, when the board met to appoint directors of the C & O Canal Company. Stewart and Nelson each nominated a slate. Chamberlain supported Stewart's nominees, and Falls supported the Nelson ticket. With no nominee receiving the requisite three votes, that matter, too, was decided by the treasurer, who selected Stewart's list of candidates. The next day, 5 June, the board met to elect directors of the Northern Central Railroad and was deadlocked until the fourth ballot.[24]

In November 1855 the terms of Stewart and Chamberlain expired, and George Peter and Benjamin Lankford were elected as their successors. At the first meeting thereafter, on 28 December 1855, Moore N. Falls was elected president, and the commissioners proceeded to elect directors of the Annapolis and Elkridge Railroad, apparently without any dissension. The board also adopted two resolutions requesting the state directors of the various internal improvement companies to use all proper means to cause the adoption of rates upon agricultural improvements and manures "as will only be sufficient to cover the cost of their transportation."[25]

20. Ibid., pp. 16-22. See also chapter 3.
21. Ibid., p. 21.
22. T. Watkins Ligon, "Inaugural Address," 12 January 1854, *Maryland State Documents, 1854* (Annapolis, 1854), doc. C, p. 5.
23. BPW Minutes, 5 March 1855, vol. 1851-83, pp. 19-20.
24. Ibid., 4, 5 June 1855, pp. 21-22.
25. Ibid., 28 December 1855, p. 29.

The minutes of the 28 December meeting reflect no discussion concerning these resolutions, which were apparently adopted unanimously. But the resolutions serve to illustrate the dual role of the commissioners and the conflict occasionally arising from it. On the one hand, their function was to see to it that the internal improvement companies operated efficiently in order to maximize the return to the state on its invested capital. But the Constitution also charged the commissioners with using all legal means to adjust the toll rates to promote the agriculture of the state. Here the latter was paramount as the board asked these companies, in effect, to subsidize agriculture by transporting icultural products at cost.

Matters proceeded routinely for the board during 1856 and 1857. Directors of the three major improvement companies were selected without difficulty in March 1856 to serve until October, at which time they were reelected. For reasons not made clear in the board's minutes, the annual meeting (and the selection of state directors) was moved to October. Aside from the selection of these various railroad directors and the election of the president and directors of the C & O Canal Company, the only other undertaking by the board was the appointment of its president, Moore N. Falls, as a committee of one to examine the books of the C & O. This he did, and at the board meeting of 26 November 1857 announced that he found them to be correct.[26]

The board was scheduled to meet again on 5 December 1857, but there are no minutes for such a meeting—only six blank pages in the minute book. Meanwhile the terms of Falls and Nelson expired in November, and Frederick Schley and Henry R. Reynolds were elected to succeed them.

The first meeting of the new board was held in Washington, D.C., on 3 February 1858, and Reynolds was elected president. The board selected the directors of the Annapolis and Elkridge and the B & O railroads. For reasons not stated in the minutes, an entirely new group of ten directors was appointed to the B & O. No incumbent state director received reappointment; indeed the incumbent slate received the vote of only one commissioner, although the minutes do not reflect who it was.[27]

During its 1858 session the General Assembly apparently had come into possession of the C & O's financial statements, which showed the company to be insolvent on both a balance sheet and income–expense basis. Having received no report from the board since March 1854 and recognizing the "calamity" to the state should navigation on the canal be destroyed, the Senate on 1 March 1858 adopted an order calling attention to the duty of the board to keep a journal of its proceedings and to report to the legislature at each regular session. The Senate further directed the commissioners:

> to communicate to the Senate a copy of their journal of proceedings, and to report by what measures they propose to provide the necessary money to pay the debts of the Chesapeake and Ohio Canal Company, that are payable out of the revenues of said Company, for the year 1858, to pay for the two stone dams now being built across the Potomac, and to remove any obstructions to the navigation of the canal that may be caused by breaches in its embankments, or by other damage that may occur to any works of this Company during the approaching recess of the Legislature.[28]

In compliance with that direction, Schley and Reynolds submitted a report to the legislature on 6 March 1858. They began by noting that they had only recently "entered upon the duties of their office, and only a few days ago obtained access to the record of proceedings of their predecessors," and therefore were not fully cognizant of the affairs of the board. Based upon their limited knowledge, however, they saw no need for additional legislation.[29]

26. Ibid., 27 March, 25 October 1856, 26 November 1857, pp. 31-32, 37, 49.
27. Ibid., 3 February 1858, p. 57.
28. *S. Jour.* (1858), p. 366.
29. Ibid., doc. I, p. 3.

Schley and Reynolds expressed great optimism with respect to the B & O, stating that "the completion of the western connections of the Baltimore and Ohio Railroad, open up a prospect of immense usefulness and profit to that great work; and the time is foreseen, when the state's investment in the stock, already productive, will be re-imbursing." A review of the railroad's tolls indicated that they were "equitable, and generally free from partial discrimination or popular complaint," although some modifications might be desirable in the future.[30]

The main part of the report, supplemented by four attached exhibits, concerned the C & O Canal Company, the financial and working condition of which, the two commissioners stated, "are alike deplorable." They noted that for the first time in five years the company's expenses for the calendar year 1857 had exceeded its revenues—by $112,921. Moreover, the company had been forced to expend $89,180 to repair breaches to two dams and "other casualties" not specified in the report. The commissioners believed, however, that when the masonry dams then under construction were completed a recurrence of such extraordinary expenses "need not be apprehended." Finally, the commissioners promised they would "be assiduous to prevent a competition in the rates of tolls between the Internal Improvement Companies, that may prove injurious to the interests of the State."[31]

The four exhibits appended to the commissioners' report illustrated both how precarious the canal's fiscal situation was and how heavy the state's investment in it had become. Exhibit 1 showed the aggregate investment of the state in the company, which totaled $14,121,061, as follows:

First–class mortgage debts, including interest due and in arrears	$4,888,587
Second–class preferred stock, including guaranteed dividends in arrears	8,443,750
Third–class common stock	625,000
Value of stock and debt of the Potomac Company, exchanged for stock in C & O Canal Company	163,724
Total	$14,121,061

The exhibit also noted that $3,080,040 in other debt (including accrued interest), authorized by the General Assembly in 1844 to finance completion of the canal to Cumberland,[32] took precedence over the liens of the state.

Exhibit 2 was an income and expense statement for calendar year 1857, showing revenues of $99,590, and expenses of $212,511.

Exhibit 3 was a cash–flow statement and showed how really bad conditions were. Total receipts by the company during 1857 amounted to $164,010, of which $76,500 were from temporary loans, only $82,274 being from tolls. Disbursements, on the other hand, amounted to $217,547. The initial cash balance of $61,874 in the company treasury on 1 January 1857 had dwindled by 31 December to $8,337 and were it not for "temporary loans" would have evaporated completely.

On 18 March 1858, twelve days after submission of this report, the four commissioners attended a general meeting of C & O stockholders, which they had called in February. Upon Schley's motion, but against the objection of Peter, who thought the meeting itself to be illegal, all of the directors and principal officers of the company were fired and new ones were appointed.[33]

In November 1858 the board's attention turned to the B & O, and a split developed between Schley on the one hand and Lankford and Reynolds on the other. The occasion

30. Ibid.
31. Ibid., p. 4.
32. Acts of 1841, ch. 281.
33. BPW Minutes, 18 March 1858, vol. 1851-83, pp. 73-76.

was the resignation of W. B. Tyler as a director of the railroad due to illness and the need to replace him. Schley offered a resolution calling attention to the need of the state–appointed directors to "act in concert and unity" with respect to management policy and noting that "the desired concert of action has not been maintained among the present directors on the part of the state; but their views as their votes and proceedings show have been in conflict and the vote of the state divided and its influence weakened if not destroyed." In light of this, Schley's resolution called for the replacement of all ten directors, which failed on a two–to–one vote. At this point the board attempted to appoint a successor to Tyler, but the commissioners deadlocked through six ballots. Again it was Schley against Lankford and Reynolds. Schley then moved to replace James H. Carter as a director due to illness, a motion that also failed.[34]

The board met next on 24 March 1859, the occasion being the annual meeting of C & O stockholders. Only Lankford and Reynolds were present. Schley wrote a letter complaining that the meeting was illegal, since the notice of the meeting stated that it would be held on 18 March, and he objected to the postponement to the 24th. Due to the lack of a quorum the meeting was adjourned. Later that day, however, the board met again, with Schley present, and filled vacancies in the directorships of the B & O and the Annapolis and Elkridge railroads. The successor director of the B & O was Robert Fowler, who later was to become the state treasurer. In June the board met to reelect the ten incumbent directors of the B & O.[35]

In November 1859 Nathaniel Duke and Lemuel Roberts were elected to succeed Lankford and Peter, whose terms had expired. The new board first met on 9 February 1860. The General Assembly was then in session, and once again the Senate had formally called for a report from the board. The preparation of such a report, dealing primarily with the toll rates (as the Senate order requested), was the principal item of business.[36]

The report submitted by the commissioners in 1860 stressed the importance of maximizing the revenue from the various internal improvement companies. The people of the state contributed to the improvements, said the commissioners, and "they are entitled to have those works managed so as to yield *revenue*; for in that revenue alone can they look for relief from the heavy taxation, which these improvements have made necessary." Any other policy, they continued, "would create serious and reasonable discontents." To that end the commissioners stated that they would "favor such rates of tolls as will maintain the revenues of the several internal improvement companies, at a standard of profit corresponding with that enjoyed by similar works in other States; believing that the upholding of this standard will not be a burden upon those who use these improvements as a means of transportation."[37]

Having said this, the commissioners added the caveat that their ability to control toll rates depended upon their power over the company. With the C & O Canal Company, of course, there was no obstacle, as the state was the majority stockholder; but where private interests had made the greater contribution of capital they deemed it unjust for them, or the legislature, "to attempt to subordinate the larger interest to the control of the smaller." Indeed, the commissioners did not "invoke any legislation as a proper means to remedy the defects, which they may believe exist in the present toll sheets of the works in which the State is interested," because the chartered rights of those companies "do not allow the Legislature to regulate tolls at its pleasure." In short, this report parroted the arguments Francis Thomas, Samuel Smith, George Schley, and Allen Davis had made at the Constitutional Convention nine years ear-

34. Ibid., 10 November 1858, p. 83.
35. Ibid., 24 March, 11 June 1859, pp. 88-91, 92.
36. Ibid., 9 February 1860, p. 95; *S. Jour.* (1860), pp. 215-16. The sponsor of the order was Anthony Kimmel of Frederick County, who had also sponsored the demand for a report in 1858.
37. *S. Jour.* (1860), doc. O, p. 2.

lier—that the legislature was simply not competent to exercise, or authorize, direct control over the internal improvement companies. Recognizing the importance of their power to appoint directors, however, the commissioners promised "to prevent, as far as possible, said appointments from bearing the impress of political nominations; they are clearly alive to the mischiefs which would result from throwing the public works of the State as prizes into the arena of politics."[38]

The only affirmative action asked of the General Assembly, which was most general in nature, was to "relieve the public works of the State from all burdens or charges, which are not directly connected with the loans made to the companies of the credit of the State." It was a total laissez-faire policy the commissioners sought: "Every fetter, every hindrance ought to be taken from them; within the limits of their separate powers, they ought to be left free to develop every resource that the energy of their creditors can discover."[39] In summary, not only did the report fail to address in any specific manner the question of tolls, but it stated explicitly that the state's role or influence in that area was, and ought to remain, extremely limited.

There appeared to be some dissatisfaction in the legislature with the way in which the board was operating, and a number of bills were considered in the 1860 session dealing with toll rates or the board itself, but none of them passed.[40] One curious measure did pass, however, that added modestly to the duties of the board.

It will be recalled that in 1835 the General Assembly had attempted to effect a political settlement of the dispute between the B & O and the C & O by throwing money at both of them. This involved subscriptions to a number of other companies as well, one of which was the Eastern Shore Railroad Company, to which the state subscribed $1 million. That subscription was, however, conditioned on the company's raising sufficient additional private capital to commence the railroad, failing which the state money was to be "applied to the exclusive purpose of Internal Improvements on the Eastern Shore," subject to "disposition by any future Legislature." To that end "the faith of the State [was thereby] pledged."[41]

By 1856 it became clear that the conditions set for the subscription to the Eastern Shore Railroad Company would not be met. Of the $1 million pledged, $152,764.14 had been expended, but the balance of $847,235.86 remained untouched. The delegates from the Eastern Shore, holding the state to its promise to expend the money on other internal improvements should the railroad plan fail, requested that the unexpended sum be equitably distributed to the Eastern Shore counties to be used for internal improvements. The legislature, armed with an opinion of John Johnson, a former chancellor of Maryland, that the 1835 contingent grant represented a form of moral obligation immune from the flat constitutional prohibition against appropriating funds for internal improvements,[42] agreed, and thus enacted chapter 303 of the Acts of 1860. That act distributed the remaining funds among the eight Eastern Shore counties, specifying how the funds were to be used in each. In seven of the counties the legislature parceled the funds to specific railroads and a bridge company. Ten companies were so designated, and the act provided for the board to select a certain number of

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38. Ibid., pp. 3, 4.
39. Ibid., p. 4.
40. The House of Delegates requested its Committee on Internal Improvements to submit the rates of various out-of-state railroads. That committee also received permission to introduce a bill defining the commissioners' duties, but it does not appear that such a bill was ever introduced. The committee did, however, report favorably a bill to regulate meetings of the board, to punish the board for failure to meet, and to authorize counsel in certain instances, but once again it appears that no further action was taken on the bill. See *H. Jour.* (1860), pp. 267, 57, 277.
41. See chapter 2; Acts of 1835, ch. 395.
42. John Johnson, "Report of the Select Committee Appointed by the House of Delegates, on a Bill Entitled, A Supplement to the Act Entitled, An Act for the Promotion of Internal Improvements," *Maryland House Documents, 1856* (n.p., n.d.), doc. J, pp. 1-8.

directors for each. This was not a new or different duty for the commissioners, of course, merely an additional one of like type.

The nine years following the last convention had been turbulent for the state, but they were only a prelude to cataclysm to follow. The commissioners experienced increasing difficulty in appointing railroad and canal company directors as the state braced itself for, and unwillingly slid into the vortex of, the Civil War.

The sensitivity of the major internal improvement companies to the shifting political realities in the state has already been noted; the board itself, being popularly elected, was certainly not immune from partisan considerations. Davis's observation during the convention debates that so long as political parties continued, "this must necessarily be a political board,"[43] turned out to be astute and largely correct. Thus, in examining the actions of the legislature and the board during the thirteen years between conventions, it is important to understand, and relate those actions to, the underlying political climate.

Though interrupted by occasional Democratic victories in the legislature or the governor's office, the Whigs had remained the dominant party in Maryland for many years. But in the early 1850s a schism began to develop within the party along sectional lines. The party was weakened nationally in the 1852 presidential election when the Democratic candidate, Franklin Pierce, defeated the Whig, Winfield Scott, and it fell hopelessly apart two years later over the Kansas–Nebraska Bill.[44] Its fortunes in Maryland were no better. Democratic governors were elected in 1847 (Philip F. Thomas), 1850 (Enoch Lowe), and 1853 (T. Watkins Ligon), and in 1851 the Democrats finally won control of the reapportioned General Assembly.

The Democrats were to be likewise eclipsed, however, first by the American party and then by the Unionists. The American party (or Know–Nothings) was the manifestation of a xenophobia that had been latent for years. With the growing immigration of Irish Catholics, and especially in Maryland with the inauguration of parochial schools and the request for public assistance for them, these latent feelings began to develop into a more strident and articulate spirit of nativism. This nativism—a clinging to the Protestant–American social fabric and, conversely, an antagonism toward immigrants and Catholics—soon became politicized. The party grew out of secret societies (hence the name "Know–Nothings"), but it eventually shed its clandestine origins and began to field candidates for public office and to campaign openly and roughly.

The American party broke upon the Maryland scene like a shooting star, achieving quick and phenomenal success. But it also faded rapidly. In April 1854 the party captured the municipal election in Hagerstown; in September its candidate, Samuel Hinks, became mayor of Baltimore; and in 1855 it won victories in Cumberland and Annapolis. By 1856 the Know–Nothings were not only in firm control of Baltimore City but had captured the House of Delegates and, with the help of a few remaining Whigs, the Senate as well. In 1857 their candidate, Thomas Hicks, was elected governor.[45]

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43. See chapter 3; *Reform Convention Debates,* 2:443.
44. Richard R. Duncan, "The Era of the Civil War," in *Maryland,* ed. Walsh and Fox, p. 310. See also Roy F. Nichols and Philip S. Klein, "Election of 1856," in *The Coming to Power: Critical Presidential Elections in American History,* ed. Arthur M. Schlesinger, Jr. (New York: Chelsea House, 1972), pp. 91-117.
45. The Know–Nothings were not the fairest campaigners. Violence and intimidation were rampant, especially in Baltimore City. Indeed the unwillingness (or inability) of the mayor and the city government to remedy the excesses ultimately led to the state assuming control of the city police force in 1860. The Know–Nothing party's huge majority in Baltimore City offset Hicks's losses in the counties and won him the governor's office.

Eventually the Know–Nothing phenomenon ran its course. The Democrats recaptured control of the General Assembly in 1859 and cut the heart out of the Know–Nothing party's political base by taking control of the city police department, dividing the city into election precincts, and declaring the election of the Know–Nothing delegates from the city void.[46]

The decline of the Know–Nothings coincided with dramatic national events. Abraham Lincoln was inaugurated president in March 1861, and a few weeks later the long–smoldering debate over slavery, secession, and the nature of the federal union erupted into violence. Charles Branch Clark describes the impact on the Maryland political scene:

> The political organization of Maryland was drastically changed by the appeal to arms. The Know–Nothing party ceased to function as did the short lived Constitutional Union party. The new Republican party was unable to gain many adherents and for some time was an unimportant faction within the State. The Democratic party ceased to exist openly. Its members were divided in allegiance to the Union, and one faction, sympathetic to the Confederacy, became known as the Secessionist, Peace, or State Rights party. The others, supporting the Lincoln administration and the Federal Government, organized as the Union party and gained control of the State in the special election held in June, 1861, to elect representatives to the United States Congress. Nor was it likely to be ousted from control so long as it was supported and protected by the Federal military force.[47]

Maryland was truly a state caught in the middle in many different ways. In terms of sentiment, the Eastern Shore and the southern counties maintained an affinity with the Confederate cause, whereas the northern and western counties were more Unionist in sympathy. Geography alone made the state's position precarious. Maryland shared a long common border with Virginia, with whom she had cordial relations. But a break in those relations left the state open to invasion, which indeed occurred, as well as to disruption of her major internal improvement works—the C & O Canal and the B & O Railroad. On the other hand, it was clear that Lincoln could not suffer Maryland to be disloyal. The safety of Washington, D.C., and a major transportation route to the West were at stake. The state was already being used as a conduit for Union troops on their way to Washington, and the threat of Union occupation in the event of dissension was real.

These uncertainties produced repeated demands for a special session of the General Assembly, which Governor Hicks, unsure of what the Democratic majority in that body might do, resisted. With the commencement of actual hostilities in April 1861, however, and the intrusion of Union troops into Maryland, Hicks finally relented. He originally called the session to meet in Annapolis, but when Union troops occupied that city he switched the meeting place to Frederick. There, with periodic interruption, the General Assembly met from April to August.

The legislature that met in special session was the one elected in 1859. It was not given to extreme views but, recognizing the realities, walked a narrow line and chose its words carefully. Through a number of resolutions the General Assembly explicitly confirmed Maryland's loyalty to the Union and recognized her obligation "to submit in good faith to the exercise of all the legal and constitutional powers of the General Government." But at the same time it declared that "the war now waged by the Government of the United States upon the people of the Confederated States" was "unconstitutional in its origin, purposes and conduct, repugnant to civilization and sound policy; subversive of the free principles upon which the Federal Union was founded, and certain to result in the hopeless and bloody overthrow of our existing institutions."[48]

46. Acts of 1860, chs. 7 (putting the city police under state control), 9 and 10 (regulating elections in the city); res. 6, 7, and 8 in effect voided the election results in the city.
47. Charles Branch Clark, "Politics in Maryland during the Civil War: The State Elections of 1861," *Maryland Historical Magazine* 37 (1942): 378. See also Duncan, "Era of the Civil War," pp. 353-56.
48. Acts of 1861 (Spec. Sess.), res. 4.

In this same resolution the General Assembly viewed the secession of the southern states as final and irreconcilable, and it asked the government to recognize that fact, to "accept the olive branch which is held out to [the president], and in the name of God and of humanity, to cease this unholy and most wretched and unprofitable strife" and especially to remove its troops from Maryland soil.[49]

At the same time, by resolution 2, the legislature commissioned Outerbridge Horsey of Frederick to proceed to Richmond and negotiate with Virginia "for the protection of the citizens of Maryland from injury in person or property, by any unadvised act of the military forces of Virginia, and their compensation for any already done." Six weeks later the legislature learned that Confederate troops had been destroying the dams, locks, canal boats, and other property belonging to the C & O Canal Company, and, by resolution 8, formally requested from the state of Virginia "full recompense for all property destroyed."

The political sentiment expressed in resolution 4 as to the legitimacy and finality of secession soon changed. As noted, the Unionists had become organized on a statewide basis and were given significant support by the Lincoln administration and the troops it commanded. This was particularly manifest on election day in November 1861. The Unionists had nominated candidates for governor and the General Assembly and apparently for the two positions on the Board of Public Works then expiring. The military authorities, seeking to assure a Unionist victory, stationed soldiers at the polling places and through arrests, intimidation, test oaths, and other coercive devices dissuaded many people from exercising their franchise. The election, says J. Thomas Scharf, was "a shameless mockery, and its results were but the work of fraud and violence."[50]

The result was the intended one. Augustus W. Bradford, the Unionist candidate, was elected governor (defeating the States Rights candidate Benjamin C. Howard, the prominent Baltimore countian and delegate to the 1850-51 Constitutional Convention), and his party gained control of the General Assembly. It also elected two commissioners to the board—Frederick Fickey, Jr., of Baltimore City, and Edward Shriver of Frederick County.[51]

The General Assembly that convened in December 1861 was of quite different persuasion from its immediate predecessor. It repudiated the doctrine embodied in resolution 4 and expressed, in various resolutions of its own, its rejection of the notion that states had the right to secede. It stated instead the view that the war "has been forced upon the government of the United States, by the seditious and unlawful acts of those who have attempted its overthrow by violence." In sharp contrast to the resolutions adopted nine months earlier, the legislature conveyed the people's "approval of the course and policy of the President in the conduct of the war thus far." The only fear, or caveat, was that Lincoln, pressured by northern agitation, might interfere with the institution of slavery in Maryland. To that end the legislature protested all schemes to excite insurrection among the slaves, regretted attempts to abolish slavery in the District of Columbia, and asked the president "to resist and rebuke all attempts,

49. Ibid. See also res. 13, adopted 22 June 1861, requesting the state's two U.S. senators to "vote for an immediate recognition of the independence of the government of the Confederate States of America." Res. 14 and 15 expressed a clear recognition of the sovereign right of a state to secede, urged the immediate cessation of hostilities, and protested in the strongest terms certain arbitrary actions on the part of the military.

50. J. Thomas Scharf, *History of Maryland from the Earliest Period to the Present Day* (Baltimore: John B. Piet, 1879; reprint, Hatboro, Pa.: Tradition Press, 1967), 3:460. Compare Duncan, "Era of the Civil War," pp. 354, 355.

51. Fickey was a merchant, deeply committed to the Union cause and to Freemasonry. His service on the board did not interrupt his political activity. In August 1862 he was one of three commissioners in Baltimore City responsible for implementing Lincoln's draft of militiamen, and in October he was an unsuccessful candidate for mayor of Baltimore.

from any and from every quarter, to convert this war into a crusade against the institution of domestic slavery."[52]

This preoccupation with more fundamental problems precluded legislative action dealing with the Board of Public Works and with internal improvements generally for the next three years. The board, however, soon found itself in a stalemate, and at a most difficult time. Sanderlin notes, with respect to the C&O Canal:

> As a result of the secession of Virginia, the canal found itself on the border between the Union and the Confederacy, in the path of the contending armies. Consequently during the first two or three years of the conflict, its trade was greatly reduced and its works alternately occupied and/or destroyed by the opposing forces. The condition of the company and its properties materially deteriorated from even the gloomy pre-war status. Only toward the end of the war when interference with navigation declined did its trade and financial status improve.[53]

The B & O, it is reported, also suffered from the various military incursions, and its trade was disrupted and equipment stolen or destroyed. These depredations did not, however, keep the board from continuing to play politics. Again, as Sanderlin reports in terms of the canal:

> Meanwhile the older problems of the canal continued to interfere with its success. Political influence brought about the wholesale turnover of employees in 1860 and 1862. Although these appointments were the last during the war years, the men who were appointed in 1862 were not particularly attentive to their duties, according to the testimony of canal officials as well as others. And the top officials continued to intrigue in state politics throughout the war.[54]

At the first meeting held after the election of Lincoln, on 2 December 1861, the board adopted a resolution permitting any one member to call a special meeting but requiring the presence of three members to constitute a quorum. The affairs of the board proceeded smoothly for about six months; in December 1861 and January and March 1862 the commissioners elected directors of the B & O, three other railroads, and the C & O, without apparent division.[55] Then, in May of 1862 a conflict erupted between the two Unionist commissioners—Fickey and Shriver—and their senior colleagues—Duke and Roberts—who had been elected in 1859.

The immediate issue dividing the commissioners seemed to be the filling of a single vacancy on the B & O board of directors arising from the resignation of Albert Schumacker, but it soon turned into a wider political and legal controversy. The four commissioners were evenly divided as to the replacement (or perhaps whether there should be a replacement). Based upon what ultimately unfolded, Fickey and Shriver must have sensed that, in the event of a tie vote, the state treasurer, Robert Fowler (who had previously been a state-appointed director in the B & O) would side with Duke and Roberts. In order to prevent that, they simply boycotted the meetings of the board, thereby attempting to stymie any board action by precluding a quorum.

This tactic initially worked; the meetings of the board called for 20, 21, and 22 May 1862 were adjourned for lack of a quorum. Duke and Roberts thereupon reacted with a stratagem of their own. On 3 June 1862 they met, nominated not just one person to fill the existing vacancy but an entire slate of new state directors to replace the incumbents, declared that the "votes of all absentees be reckoned against the ticket nominated [by them]," concluded that there was therefore a tie vote as to that ticket,

52. Acts of 1862, res. 15, 13, 3.
53. Sanderlin, *Great National Project*, p. 212.
54. Hungerford, *Story of the Baltimore & Ohio*, 2:19; Sanderlin, *Great National Project*, p. 220.
55. BPW Minutes, 2, 16 December 1861, 29 January, 30 March 1862, vol. 1851-83, pp. 113, 115, 117, 118. On 30 January 1862 the board unanimously adopted a slate of candidates for president and directors of the C & O Canal Company to be presented at the stockholders' meetings. They noted that "the interests of the [company] demand that a change be made in the direction and management of the said company." See ibid., 30 January 1862, p. 118. Compare Sanderlin's observation, note 54 above.

and asked the treasurer to cast the deciding vote. The treasurer obliged, and Duke and Roberts considered that they had elected ten new directors of the B & O.[56]

Fickey and Shriver responded with a lawsuit. Engaging as their counsel William Schley, a cousin of the Frederick County Schleys, they sought in the Superior Court of Baltimore City a writ of mandamus directing the president and directors of the B & O not to admit the state directors selected at the 3 June meeting. On 18 November 1862 the court issued the writ, declaring the June meeting to be "illegal and unconstitutional."[57]

An exchange of correspondence between the factions followed and ultimately led to a resolution of the matter.[58] On 26 November, Duke and Roberts wrote to their colleagues, calling a special meeting for the 29th to replace one B & O director who had resigned, "to make such changes, in whole or in part, in the Directors on the part of the State in said Company, as shall seem necessary and proper to the said Board of Commissioners of Public Works when assembled; and to do such other business, as in the judgment of said Commissioners shall appear proper when they are assembled." Fickey and Shriver responded on the 29th that they agreed to meet for the purpose of replacing the one director, "if you will limit the business of the meeting to that object; or if you will give us assurance, that you do not design to force a change of directors on the part of the State, through the action of the Treasurer, if we should attend a meeting, today, of the Board."[59]

The next entry in the board minutes was the brief comment that, "after the above correspondence informal interviews were had, which resulted in a call for a meeting of the Commissioners of Public Works, at Barnums Hotel December 2, 1862." The four commissioners met on that day—for the first time in more than eight months—and unanimously elected *ten* state directors to the B & O.[60]

The next meeting of the board was on 1 June 1863, the occasion being the annual C & O stockholders' meeting. This time Duke and Roberts stayed away, and so the meeting was adjourned for the lack of a quorum.[61]

Duke and Roberts were replaced in November 1863, their terms having expired, but some measure of disharmony continued. In the 1864 session of the General Assembly a bill was introduced to increase the number of B & O directors selected by the private stockholders. At the time there were thirty directors, the state selecting ten, Baltimore City eight, and the private stockholders twelve. The bill would have restructured the board and allowed the private capitalists to elect thirty directors, thus enabling them to control the company. At their 17 February 1864 meeting the four commissioners unanimously adopted a motion opposing that bill, but, on a tie vote, they declined to endorse a proposed "address" to the General Assembly on the subject. The "address," sponsored by Shriver and Andrew McIntire, who apparently favored giving the private owners control, but not to the extent provided in the bill, said, in part:

> The history of the past has shown that works of Internal Improvement when managed by Political Power have been unsuccessful; it is not in the power of the Commissioners to find

56. BPW Minutes, 3 June 1862, vol. 1851-83, p. 124. Actually, Duke and Roberts "continued" in office three of the incumbents—Edward Hammond, William S. Reese, and Isaac Nesbit—and appointed seven new directors.
57. *Edward Shriver et al. v. the Baltimore and Ohio Rail Road et al.*, Baltimore Superior Court, Civil Papers, R 37, MdHR 602-00-152, box 21.
58. Although the underlying dispute was quickly resolved, an appeal was taken from the court's decision. The appeal was docketed in the Court of Appeals in December 1862, where it remained dormant until 1866. Finally, there is a note in the April 1866 term of the Court of Appeals that the parties had agreed to abide by the lower court's decision. Court of Appeals, Docket, WAS, pp. 44, 403, MdHR 634.
59. BPW Minutes, 26, 29 November 1862, vol. 1851-83, pp. 128, 130-31.
60. Ibid., 2 December 1862, pp. 135-36. One of the legal issues raised in the action filed against Duke and Roberts was that the state directors were appointed in December for a one-year term and could not be replaced in June without good cause. The December elections, at the time, were the annual ones.
61. Ibid., 1 June 1863, p. 136.

> where the fault has lain, but the fact speaks for itself, in addition to the facts which our own State furnishes we have only to refer to those of our sister State, Penna. The canals and Railroads constructed by and at the expense of that State, did under political management become so great a burden upon the State that she did in 1851 determine to dispose of them. The works then passed into the hands of private corporators, who have since made them profitable to themselves and useful to the citizens. It is greatly to be regretted that the history of the past furnishes so many conclusive proofs of the failure of Political representation to manage successfully the works of Internal Improvement. It is also to be regretted that the works of internal improvement, originally intended to develop the resources of the States, and increase the wealth and influence of the body Politic must be subordinate to dividend making concerns.[62]

Once again the commissioners were derelict in their constitutional duty to report to the legislature, and once again the Senate adopted an order requiring such a report. In obedience, the commissioners made a report (the next day) as best they could, noting that, "owing to the disturbed condition of the country, they have found it impossible to obtain such information of the condition of the various works of Internal Improvement in which the State is interested as to enable them to report as required by [the Constitution]."[63]

That rather perfunctory report was to be the last one made by the commissioners. The nation was in the midst of a Civil War that engendered dramatic changes in Maryland government, politics, and institutions. With respect to the state-financed "works of internal improvements," the focus was changing from prudent management to immediate divestiture. A new entity—a board of public works—was to be created to achieve that end.

62. *S. Jour.* (1864), pp. 301, 356, 383-99; BPW Minutes, 17 February 1864, vol. 1851-83, pp. 140-42.
63. *S. Jour.* (1864), p. 399; BPW Minutes, 8 March 1864, vol. 1851-83, p. 149.

CHAPTER 5

The Constitutional Convention of 1864

Substantial changes in the structure of the Board of Public Works and in the state's policy toward its existing internal improvements were on the horizon, but they were merely incidental when viewed against the more fundamental political shifts occurring in the state.

The debate over slavery, or more precisely, over emancipation, never far from the forefront, was fast becoming the critical and most divisive issue in the state. It was an issue of constitutional dimension in Maryland, for the 1850-51 Constitutional Convention flatly forbade the General Assembly from passing any law "abolishing the relation of master or slave, as it now exists in this State";[1] thus emancipation in Maryland would require an amendment to either federal law or the state Constitution.

The issue was forced by the Lincoln administration. In March 1862 the president outlined to Congress a proposal for giving federal assistance to any loyal state that provided for compensated emancipation. This was followed in short order by an act of Congress abolishing slavery in the District of Columbia, with compensation. Those actions, almost at once, caused a rift in the Unionist party—a rift that, within a year, became an open split.

The rhetoric of the two groups somewhat beclouded the issue and suggests that the differences were more of timing and tactics than of principle. The conservative party leaders, though fully supporting Lincoln's war aims, were unwilling to endorse his proposal for compensated emancipation, even if the actual emancipation were to occur in the future. They preferred to postpone the issue until the end of the war and then to leave it to a state constitutional convention. More "radical" party members, calling themselves Unconditional Unionists, met separately in Baltimore in May 1862 and adopted a resolution affirming support for the president's emancipation plan. Later they softened their stance a bit by making clear their disavowal of violence and urging emancipation "legally and constitutionally . . . at the earliest period compatible with the best interests of the State."[2] Inferentially, at least, emancipation was not to await the end of hostilities.

Whether for this or other reasons, an open schism developed to the point that during 1863 Unionist party groups met separately and had little formal communication with each other. Efforts at reconciliation failed, and as the November 1863 elections approached each nominated a slate of candidates.

There is some dispute about just how free the 1863 elections were. Military authorities were much in evidence and, through arrests of "disloyal" persons, enforce-

1. Maryland Constitution (1851), art. 3, sec. 43.
2. Duncan, "Era of the Civil War," p. 373.

ment of the test oath, and other tactics, certainly intimidated non–Unionists, particularly on the Eastern Shore. It was claimed that Federal soldiers went further and actively assisted the Unconditional Unionists while impeding the conservative, or regular, Unionists, although the extent of such interference is open to debate.[3] In any event, the "radical" Unconditional Unionists won the day, gaining control of the General Assembly and electing four of the state's five congressmen as well as their candidate for state comptroller. Gov. Augustus W. Bradford, recognizing the great victory, joined the call for immediate measures to end slavery. This entailed, of course, a constitutional convention.

The new legislature met on 6 January 1864. Heeding the governor's call and its own popular mandate, it enacted on 3 February a bill submitting the question of calling a convention to the people. At the election, to be held on 6 April, the voters were also to select the convention delegates. Should the vote favor a convention, one was to be called three weeks later. Once again the Unconditional Unionists were successful. The call for a convention was approved by a nearly two–to–one majority, and, of the 96 delegates elected, 61 were Unionists. The other 35 were Democrats from southern Maryland.[4] When the convention met and organized, it elected as president the Unconditional Unionist state comptroller, Henry Goldsborough of Talbot County.

Once again the question arose of what to do about the state's interest in the various internal improvement companies. Much of the groundwork had been laid in the 1850-51 Constitutional Convention, and there was little dispute about the general policy to be followed. The restrictions against lending the state's credit to private entities or becoming involved with any new works of internal improvement were reaffirmed with little dissension or debate. The decision to have the state divest at least some, if not all, of its current investments in the improvement companies was also confirmed. The real issues were the mechanical ones: (1) which of these investments would be liquidated, when and under what circumstances or conditions, and who would superintend the disposition; and (2) who, in the meantime, would protect the state's interest? These two issues were handled by different committees, although the results eventually coalesced.

There was not a great deal of debate about the second issue—the function then committed to the Commissioners of Public Works. On 12 May, John R. Sneary of Washington County moved that the Committee on the Tenure, Duties and Compensation of All Civil Officers Not Embraced in the Duties of the Standing Committees (a special standing committee designated by the convention) "inquire into the expediency of abolishing the office of Commissioners of Public Works." The committee chairman, Daniel Clarke of Prince George's County, responded that the matter was already before the committee "and is under consideration."[5]

Two weeks later, on 25 May, the committee made its report. It proposed that "the Governor, the Comptroller of the Treasury and the Treasurer, shall constitute the Board of Public Works" but shall receive no additional compensation for that service. The duties established for the board were essentially those then committed to the commissioners—exercising a "diligent and faithful supervision of all public works in which the State may be interested as stockholder or creditor," appointing directors in the canal and railroad companies, and using its powers to adjust the toll rates of the improvement companies to avoid injurious competition and to promote the agriculture

3. Ibid., p. 375.
4. *Report of the Constitutional Convention Commission* (Annapolis, 1967), p. 52.
5. *The Debates of the Constitutional Convention of the State of Maryland, 1864* (Annapolis, 1864), 1:74 (hereafter *1864 Debates*).

of the state. The major differences from the existing constitutional duties were (1) the directors appointed by the board, rather than the board itself, were to represent the state's interest at stockholders' meetings; (2) the board was required to hold regular meetings in Annapolis four times a year—on the first Mondays of January, April, July, and October; and (3) the board was empowered at its meetings to "hear and determine such matters as affect the public works of the State and the Legislature may confer upon them the power to decide."[6]

Having received this recommendation, the convention for nine weeks turned its attention to more important matters. The Board of Public Works came back for discussion on 2 August, at which time there was a good bit of "nit-picking" but not much substantive debate. It was agreed, for example, that a majority of the board should be competent to act, but considerable debate took place before the exact language expressing that consensus could be agreed upon. It was also resolved that the required quarterly meetings be on Wednesdays rather than Mondays in order that the comptroller and treasurer not have to travel on weekends.[7]

One substantive change, suggested by Archibald Stirling of Baltimore City, was that the board be expanded to five members by adding the lieutenant governor and the commissioner of the land office. Stirling expressed the view that a five-member board would be better than three in that "by having officers exercising different functions and elected at different times, you distribute the matter better throughout the State, and make this board more a representative of all the interests of the people."[8] Stirling's amendment was not adopted, but the debate on it gives some insight into why the governor, the comptroller, and the treasurer were selected.

Peter Negley of Washington County, in opposition to Stirling's proposal, stated:

> There is a solid and substantial reason why the governor, comptroller, and treasurer should constitute this board. The governor is the chief officer of the State, and therefore a higher responsibility attaches to the proper discharge of his duties than to those of any other officer. In the next place the comptroller and treasurer are the sworn and bonded financial officers of the State. They understand all the finances of the State, and therefore they are the proper officers to take this matter into consideration. Put any other man on that board, and he will be controlled, as the governor will be to a great extent, by knowledge obtained from the comptroller and treasurer. If they want to understand anything about the finances or the public works of the State, where do those officers go? where does the legislature go? to whom do the people look but to the report presented to them by the comptroller and the treasurer? They are the proper officers; within their cognizance come all the financial operations of the government of the State. They have before them continually the operation of our public works; they know all about them, just as the merchant knows the goods upon his shelves, or the banker knows the accounts in his books. They are the only parties in the State that are perfectly cognizant of these matters; therefore there is peculiar wisdom in constituting them to the board. I do not care if you multiplied the number of the board a thousand times, they must depend upon these two sworn and bonded officers for the information they act upon.

James T. Briscoe of Calvert County agreed that the reason the committee selected these three officials "was the fact that the duties of the governor, comptroller and treasurer relate particularly to the financial affairs of the State, and they are therefore better prepared to consider these matters."[9]

Stirling responded that he laid no particular stress upon the matter but felt that it would be demeaning for the governor to attend stockholders' meetings. To this objection William Daniel of Baltimore City replied that the governor would not attend stockholders' meetings; the directors appointed by the board would perform that func-

6. Ibid., p. 163.
7. Ibid., 2:1083-89.
8. Ibid., p. 1087. The convention had not yet decided whether to have a lieutenant governor, but the proposal was under active consideration and was ultimately provided for in the Constitution. The commissioner of the land office was an elected official.
9. Ibid., p. 1088.

tion. With that, the amendment was rejected, as was a later proposal by John L. Thomas of Baltimore City to include, as additional members, the lieutenant governor and the attorney general.[10]

The only other changes made to the provisions for the Board of Public Works were stylistic, recommended by the Committee on Revision. Thus the committee recommendation, with the few amendments noted, ended up as sections 1 and 2 of article 7 (Sundry Officers) in the Maryland Constitution of 1864.

Of far greater significance to the convention than the matter of who was to represent the state's interests in the various internal improvement companies was how ultimately to dispose of those interests. The 1851 Constitution, as noted, looked toward their sale to the political subdivisions once the state debt was paid, section 42 of article 3 providing:

> That it shall be the duty of the Legislature so soon as the public debt shall have been fully paid off, to cause to be transferred to the several counties and the city of Baltimore, stock in the internal improvement companies, equal to the amount respectively paid by each towards the erection and completion of said works, at the then market value of said stock.

The 1864 delegates had a number of objections to that approach, partly, perhaps, because the fortunes of the various companies (and thus the value of their stock) were not at all the same. The B & O Railroad Company, for example, was thought to be quite a good investment, whereas the C & O Canal Company was considered as "a dead loss to the State."[11]

While the issue of interim management of the state's investments was referred to the catchall Committee on the Tenure, Duties and Compensation of All Civil Officers Not Embraced in the Duties of the Standing Committees, the question of ultimate disposition of those investments was committed to the Committee on the Legislative Department. That committee recommended, as proposed section 39 of article 3, that:

> The General Assembly shall pass laws to sell, lease or otherwise dispose of the State's interest in the works of internal improvement, in which the State is either stockholder or creditor; and to appropriate the proceeds arising therefrom towards the payment of the public debt of the State; and after the public debt shall have been fully paid off, or the sinking fund shall be equal to its liquidation, to create out of said proceeds a permanent fund for the support of public education.[12]

This proposal differed in at least three important respects from the existing provision: (1) it envisioned an immediate disposition, not to await the discharge of the state debt; (2) it permitted a disposition short of sale—a lease; and (3) it removed the restriction that the investments be sold to the subdivisions (or, conversely, the obligation that they purchase them). Each of these distinctions sparked some debate, as did a number of other aspects of the proposal.

There was the question, for example, of who would superintend this disposition of the state's interest in the internal improvement companies. The committee proposal committed that to the legislature, as did an alternative proposal submitted by Ezekiel Chambers of Kent County. James L. Ridgely of Baltimore County saw some danger in that. He and Oliver Miller of Anne Arundel County separately offered proposals authorizing the governor, the comptroller, and the treasurer, or any two of them, to sell the investments "from time to time according to their best judgments,"[13]

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10. Ibid., 3:1688.
11. Remarks of Oliver Miller of Anne Arundel County, ibid., 2:816.
12. Ibid., p. 814.
13. Ibid., pp. 872-73, 899.

Ridgely explained:

> The reasons which have induced me to suggest the governor, comptroller and treasurer of the State, as the proper agents for the exercise of this important power, lie within a very narrow compass. There are millions of dollars of the State's property which, in the event of the adoption of this proposition, or any of these propositions, are to be thrown upon the money market. Active interests will accordingly be awakened and excited. And, if the legislature of the State is to be the agent through which this power is to be exercised, it is in the experience of every gentleman in this house, that that legislature will be besieged, and every variety of influence will be brought to bear upon that legislature, with a view, not to promote the interests of the State, but to promote the interests of the individuals who are exerting that influence to attain their individual ends. The interests of the State will therefore be in great danger; the interests of the State will be imperilled, and in all probability a bad bargain for the State will be made. Whereas, it is my deliberate conviction that if this trust is confided to the governor, comptroller and treasurer of the State, the matter will be placed in hands which we can trust with great confidence; and that so long as the power lies in the hands of those gentlemen we may rest assured that no attempt to obtain an advantage over the State will be successful. It is for this reason that I have been induced to take away from the legislature the power in the premises, in order to remove the State as far as possible from danger and to profit by the experience which is within the mind and memory of every gentleman in this house, as to the dangers that ordinarily surround every legislative body in the exercise of such an important power as this.[14]

That part of Ridgely's amendment was ultimately adopted, but not necessarily because of the concerns he voiced. Frederick Schley of Frederick County, for example, allowed as he had "no such apprehension that the general Assembly of Maryland will be corrupted," observing that "one benefit of the discussion by this convention to-day will be to attract public attention so conspicuously to the action of the next general assembly that the most effectual conceivable guaranty will be given thereby to the public, that whatever law may be passed in that direction will not be contaminated by lobby corruption." Stirling, indeed, saw the danger of corruption as more likely if the discretion were vested in but three people:

> It is too much power to vest in anybody. You cannot buy a whole legislature; or if you can, it is one of the things you cannot prevent. If you can corrupt the whole foundation of government there is, there is no use in making any provision. But to make it depend upon two individuals, because it names three, and any two can decide—is conferring a power I am not willing to trust in the hands of any two men that live between Maine and California.[15]

The question of which body would be the more easily corruptible was not the decisive one. Negley offered two other reasons for choosing the three executive officials. First, he said, there was the question of timing. The investments should be disposed of "as speedily as possible," and, although the legislature, if given the power, might delegate it to the three executive officials, it would have to enact a law doing so. Under the Ridgely proposal they would be authorized to sell by the Constitution and need not await any legislative action to implement the sale. It was important to get rid of the stocks at their current high prices and not take the chance that "in six months there may be a tumbling of stocks." Moreover, referring to their likely constitution as the Board of Public Works, he observed:

> And the governor, comptroller and treasurer of the State are the proper parties to effect this sale. They are the financial agents of the State, and ought to know, and they do know best where to go to sell these stocks. They are better acquainted with the prices of stocks, and the money goes immediately into their hands where it ought to go. They are the appointed financial *agents of the State; and are the proper parties* to effect this sale; *and I* think it is infinitely better that those officers should constitute the board than that the legislature should have the power to create a board. And we do not know what means of corruption might be brought to bear in the creation of that board, and upon the board

14. Ibid., p. 900.
15. Ibid., pp. 910, 912.

afterwards. I am decidedly in favor of making the governor, comptroller and the treasurer the board for the sale of the interest of the State in these public works, and let them go to work and make the sale immediately after the adoption of this constitution. The whole matter is left to their judgment and discretion, and they can take advantage of the high prices of stocks at this time.[16]

The convention evidently found this reasoning persuasive and opted to place the responsibility in the hands of the three executive officials. Having made that decision, it then turned its attention in earnest to what should be sold and how. The delegates considered such things as how salable the C & O interests would be; what effect it would have if the B & O acquired the state's interest in the C & O and closed the canal in order to eliminate the competition; what would happen if control of the B & O were acquired by New York capitalists; the economics of selling stock at a constitutionally required forced sale; the extent to which the proceeds of sale could, in fact, be applied to the state debt, which was not callable by the state prior to maturity and which might have to be bought in at a premium; whether the bank stock owned by the state should also be sold; whether the subdivisions should have some right to purchase the state's investments; whether the special 20 percent gross receipts tax on the B & O's Washington Branch was a state interest that would have to be sold; and a host of other particulars.[17]

The debate dragged on and on. The ultimate product was sections 52 and 53 of article 3, which provided:

Sec. 52. The Governor, Comptroller, and Treasurer of the State are hereby authorized, conjointly, or any two of them, to exchange the State's interest as stockholder and creditor in the Baltimore and Ohio Rail Road company for an equal amount of the bonds or registered debt now owing by the State; and, subject to such regulations and conditions as the General Assembly may from time to time prescribe, to sell the State's interest in the other works of internal improvement, whether as a stockholder or a creditor; also, the State's interest in any banking corporation, and receive in payment the bonds and registered debt now owing by the State, equal in amount to the price obtained for the State's said interest; *Provided,* that the interest of the State in the Washington Branch of the Baltimore and Ohio Rail Road be reserved and excepted from sale; and *Provided further,* that no sale or contract of sale of the State's interest in the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal, and the Susquehanna and Tide–water Canal Companies shall go into effect until the same shall be ratified by the ensuing General Assembly.

Sec. 53. The General Assembly before authorising the sale of the State's interest in the Chesapeake and Ohio Canal, and before prescribing regulations and conditions for said sale, shall pass all laws that may be necessary to authorize the Counties of Allegany, Washington, Frederick and Montgomery, or any one of them, to create a debt by the issue of bonds or otherwise, so as to enable them, or any of them, to become the purchasers of said interest.

The Constitution adopted by the 1864 Constitutional Convention did much more than merely restructure the state government, although it did make a number of important changes in that government. In addition to creating the first truly constitutional Board of Public Works, it provided for a lieutenant governor, who was to serve (as did his federal counterpart, the vice–president) as president of the Senate, and reestablished the office of attorney general, which had been abolished in 1851. But more important, the new Constitution carried forth the Unconditional Unionist platform to the letter by completely abolishing slavery in Maryland, without compensation from the state.[18] This was, of course, an extreme but proud moment in the state's history. Equally extreme but much less proud, however, were the provisions of article

16. Ibid., p. 904.
17. Ibid., pp. 905-13.
18. Maryland Declaration of Rights (1864), art. 24. See also art. 3, sec. 36. The Constitution did, obliquely, leave open the possibility of federal compensation. Sec. 45 of art. 3 empowered the General Assembly "to receive from the United States any grant or donation of land, money or securities, for any purpose designated by the United States, and [to] administer or distribute the same according to the conditions of the said grant."

1, section 4, and article 12, section 9, which served to disenfranchise anyone who had aided, abetted, or even expressed sympathy for, the Confederate cause.[19]

This disenfranchisement was made applicable to the ratification vote on the Constitution itself through the device of a mandatory loyalty oath. The objection that this effectively retroactive application of the oath was unconstitutional was brushed aside by Governor Bradford, and the election proceeded on 13-14 October 1864.[20] The vote was much closer than the Unionists had anticipated, even with the loyalty oath; indeed, it was only by virtue of the absentee votes of the soldiers that the Constitution squeaked by with a plurality of 375.[21] It took effect 1 November 1864.

19. Art. 1, sec. 4, provided, among other things, that no one "who has by any open deed or word declared his adhesion to the cause of the enemies of the United States, or his desire for the triumph of *said enemies* over the arms of the United States, shall ever be entitled to vote at any election to be held in this State" unless excused by two-thirds of the General Assembly or subsequently serving in and being honorably discharged from the military service of the United States.
20. See George Vickers to Gov. Augustus W. Bradford, 14, 27 September, and the governor's replies, printed in *1864 Debates*, app., 3:1903-15.
21. *Report of the Constitutional Convention Commission*, p. 55.

CHAPTER 6

The New Board: 1864-1920

The Board of Public Works created by the 1864 Constitution did not come officially into being until 4 January 1865. In the meantime the commissioners continued to meet and attend to their business. They appointed directors in the various railroads and the Chesapeake and Ohio Canal Company, directed increases in the tolls charged by the C & O, and sought federal aid in repairing damage done to the canal by Union troops. On 4 January 1865 the commissioners met for the last time, at the State House in Annapolis, and adjourned *sine die*. The new Board of Public Works met and organized the same day. As its first act, the members chose as secretary of the board Chapman Harwood, a former state–appointed director of the Baltimore and Ohio Railroad Company.[1]

Although the new Constitution expressly permitted the General Assembly to delegate to the board some very general authority over the "public works" of the state, it seems clear that the focus was on the management of the existing railroads and canal and bridge companies and not on any other types of "public works." Except for the State House, the governor's mansion, and the penitentiary, there were few public buildings or institutions in existence, and neither the convention debates nor the acts of the legislature in the succeeding two sessions reveal any anticipation or desire that very many would be developed.

Thus it was that, for the three–year duration of the 1864 Constitution, the board did little more than the commissioners had formerly done. It appointed directors and concerned itself generally with the problems and affairs of the railroads and other improvement companies. Despite all of the rhetoric and debate about the need to dispose of the state investments promptly, not one share of stock and not one bond was sold or exchanged during the life of the 1864 Constitution. The board did on occasion solicit the advice of the attorney general—a resource not available to the commissioners—although it did not always follow his advice and sometimes ignored him in favor of the prominent Baltimore attorney William Schley.[2]

1. BPW Minutes, 23 March 1864-4 January 1865, vol. 1851-83, pp. 156-68.
2. The first legal matter coming before the board was not referred to the attorney general. The House of Delegates, on 27 February 1865, directed the board to investigate the condition of the Annapolis and Elkridge Railroad Company and to institute such legal proceedings as would elicit a full discovery of all its operations, enforce payment of certain obligations, and procure a judicial construction of Acts of 1841, ch. 168, which set up procedures for payment of the company's creditors. For that purpose the board employed William Schley as counsel. Schley was also employed by the C & O to institute proceedings in the name of the state to enjoin certain attachment proceedings against the C & O for the purpose of protecting the state's mortgage lien on the property sought to be attached. See BPW Minutes, 5 April, 5 July 1865, vol. 1851-83, pp. 170, 172-74.

The 1864 Constitution, as shown by the slim margin by which it was adopted, was not very popular. Its most approbrious feature was the disenfranchisement in all future elections of a large number of former Confederate sympathizers, unless excused by act of the General Assembly or subsequent service in the United States military forces. When an attempt to excise that provision by judicial means failed,[3] the movement to repeal it through constitutional revision grew. By 1866 the Democrats had regained enough strength, even with the test oath, to capture control of the legislature. The new General Assembly, meeting in January 1867, quickly enacted the necessary enabling legislation to call a new constitutional convention. The vote, taken in April, was favorable; the delegates were elected, and the convention opened in May.

Unlike the procedure used in 1864, the Constitutional Convention of 1867 created a standing Committee on Public Works and delegated the entire matter to it. The sections formerly spread between articles 3 and 7 were therefore brought together in a separate proposed article entitled Public Works.

There appears in this convention to have been no real question about either the continuation or the composition of the Board of Public Works. Furthermore, aside from clarifying what were perceived to be some ambiguities in the language of the 1864 Constitution, there was no substantial disagreement about what the board's function should be. Most of the changes pertaining directly to the board were of style only. Sections 1 and 2 of article 7 were adopted with minor changes as corresponding sections of the new article 12.

Most of the argument over internal improvements in the 1867 convention concerned the C & O Canal Company. Indeed, in terms of the length and intensity of the debate, that was one of the most contentious issues before the convention. What sparked it was an act passed by the 1867 General Assembly—chapter 359. In a preamble to the act the legislature noted that there were preferred bonds of the C & O outstanding, upon which no interest had been paid since 1852. In order to accommodate the bondholders, the legislature directed the board, in its selection of the president and four of the six C & O directors, to vote the state stock for those persons nominated by a majority of the trustees for the bondholders. The effect of this, of course, was to give effective control of the canal company to the bondholders.

The Committee on Public Works' recommended that a provision similar to chapter 359 be included in the Constitution of 1867, and that touched off a long and acrimonious debate. Considering the state's investment in the company, opponents viewed the proposal as an unholy giveaway, not much different than if the State House itself were involved. Proponents, such as Alfred Spates of Allegany County, a longtime president of the C & O, responded that all the bondholders wanted to do was "to rescue this canal from political control, and if it was done the people of the whole state would have cause for rejoicing."[4]

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3. *Anderson v. Baker,* 23 Md. 531 (1865).

4. Philip B. Perlman, comp., *Debates of the Maryland Constitutional Convention of 1867* (Baltimore, 1923), p. 447 (hereafter *1867 Debates*). There were legitimate arguments to be made on both sides of the issue. In response to one of the company's periodic requests for state aid during the construction phase, the General Assembly decided that, rather than put additional state funds into the project, it would encourage private investment by waiving the state's lien priorities. Thus, by Acts of 1844, ch. 281, the legislature authorized the company to issue $1,700,000 in preferred bonds and declared those bonds to constitute a preferred lien on the revenues and tolls received from that part of the canal between Georgetown and Cumberland. The problem was, of course, that whether as the result of state control or otherwise, there were insufficient revenues to pay even the interest on the bonds. By 1867 the accrued interest arrearage amounted to $4 million—more than twice the principal amount of the bonds. The state's investment, of course, was much greater, not only in terms of dollars invested but in terms of the canal's value and contribution to the state's economy. See Sanderlin, *Great National Project*, pp. 203-25; *1867 Debates,* pp. 450-58; *Brown et al. v. Chesapeake and Ohio Canal Co.,* 73 Md. 567 (1890).

The issue had political, economic, regional, and philosophical overtones; indeed, so many of the delegates and so much of the political establishment had ties of one sort or another with the canal company, or its chief competitor the B & O, that the precise motives of the various functionaries are not altogether clear. What is clear is that the opponents of the "giveaway" won. Not only was the proposed language rejected, but there was added to section 2 of the proposed article a specific nullification of chapter 359.[5]

There was virtually no discussion in the convention of the other internal improvement companies, except in the context of the C & O issue. The committee had made a number of changes in the language pertaining to them, however, which were adopted without question or debate.

Sections 52 and 53 of article 3 of the Constitution of 1864 drew a careful distinction between and among the B & O, the C & O, other internal improvement companies, and the banks. As to the B & O, the board was authorized, without any further action by the General Assembly, to exchange "the State's interest as stockholder and creditor" for "an equal amount of the bonds or registered debt now owing by the State." Its authority to sell the state's interest in other internal improvement companies and in the banking corporations, however, was "subject to such regulations and conditions as the General Assembly may from time to time prescribe." That was one distinction.

Another concerned the manner of sale. In disposing of bank stock, the board was authorized to exchange it for state bonds "equal in amount to the price obtained for the State's said interest." Interests in the other improvement companies had to be sold for cash, however, and as to the C & O the Constitution envisioned a sale to the four counties bordering the upper Potomac. The sale of any canal securities had to be ratified by the General Assembly.

The new Constitution, in section 3 of article 12, (1) limited the board's authority to exchange the B & O stock to the 6 percent preferred, thus precluding an exchange of the common stock and bonds owned by the state, (2) required that the exchange be at not less than either the par or the market value of the stock, (3) excepted the state's interest in the Washington Branch of the railroad from any sale, and (4) by subtle punctuation changes, empowered the board to exchange the state's interests in other improvement companies for state bonds. The requirement of legislative ratification of the sale of canal securities was continued.

As in the 1864 Constitutional Convention, there was hardly any discussion about public works in any context other than the railroad, canal, and bridge companies. The authority of the board to "hear and determine such matters as affect the Public Works of the State, and as the General Assembly may confer upon them the power to decide" was continued, but it received no attention and elicited no debate. As section 2 of article 12 makes clear, it was the works of internal improvements that were considered to be the "public works" of the state. The board never concerned itself with anything else—not in 1825-28 and not since 1851—and, aside from the added responsibility to rid the state of its investments in the various companies, there was no suggestion by the 1867 delegates that it would.

The 1867 Constitution, which was approved by the voters in September 1867 and took effect on 5 October of that year, did not change the structure of the board, and there was no interruption in its routine. The traditional, and limited, view of the

5. This was a remarkable amendment, representing an almost unique example of a Constitution nullifying a specific statute. As adopted, it read, "And the provisions of the act of the General Assembly of the year 1867, chapter 359, are hereby declared null and void." *1867 Debates,* p. 488.

board's *function,* however, was soon to change dramatically. In the decade after the Civil War the country, and the state, entered the Industrial Age in earnest. The rapid development of an industrial society, and all of its attendant economic and social problems, caused new demands to be made upon state government. People looked to the state for more and a greater variety of public services—education, public safety, regulating the excesses of a capitalist system. These responsibilities, in turn, meant an expansion of state government—new bureaus and offices, new public institutions—that required public financing. It was not long before the General Assembly looked to this unique body composed of the three ranking executive officials as a handy and responsible agency to superintend the provision of these new services and the raising of capital necessary to put them into place. And so, gradually, the Board of Public Works began to manage not only state investments in a few private companies but the acquisition and construction of considerable amounts and types of public property and the basic fiscal affairs of the state as well.

One of the precursors of this new role of the Board of Public Works occurred in 1866 when the General Assembly, by Acts of 1866, chapter 46, authorized the board to sell the governor's mansion to the U.S. government for an addition to the Naval Academy. With the proceeds from the sale and such other money appropriated by law the board was authorized to "procure, by purchase or otherwise, in the name of the State of Maryland, a lot or parcel of ground in Annapolis, as a site for the future residence of the governor of Maryland, and by erecting buildings and improvements thereon, provide a suitable Mansion and Appurtenances for that purpose." If the board carried out these duties, its minutes, normally quite detailed, do not reflect it.

Aside from the replacement of the governor's mansion, it took several years for new duties to be thrust upon the board, and, for the most part, its focus remained on the internal improvement companies until 1871. Beginning in May of that year the board began to receive a number of offers for the exchange of state bonds for B & O preferred stock, and most of its meetings throughout the next year and a half were devoted to considering and approving these offers. These offers to exchange bonds for railroad stock continued sporadically into 1876, and a sizable amount of preferred stock of the B & O was sold in this manner—most of it through Robert Garrett and Company.[6] In addition to accepting the exchange offers, the board appointed railroad and canal directors, but the total volume of its official business was not very great. From January 1872 until May 1876, in fact, the board dispensed with a secretary, the treasurer acting as secretary pro tem and keeping the handwritten minutes.

In 1875 the Board of Public Works began to get more involved in the construction business. In its 1874 biennial session the General Assembly authorized two large public projects—$250,000 for the House of Correction at Jessup (still in use) and $100,000 for a state normal school (now Towson State University). In each case the board was not only involved in the issuance of the bonds to pay for the projects but charged with purchasing the land and constructing the necessary buildings.[7]

The situation with the House of Correction was somewhat unusual. The enabling act provided that the proceeds for the purchase of the land and construction of buildings were to be paid by the treasurer upon warrant of the comptroller to the Board of Public Works *and the attorney general,* and it appears that all relevant decisions were to be made by the board and the attorney general acting together. This was not true with respect to the normal school, where the attorney general was given no role to play.

6. The board minutes show exchanges amounting to over $430,000 being approved in May 1871, mostly to banks. Garrett began making the exchanges in October and soon was the only company interested. Starting in January 1872, the debt traded for the stock was primarily the 5 percent sterling bonds, which were exchanged at the fixed rate of $4.84 per £.
7. Acts of 1874, chs. 233, 469.

A problem arose when, for whatever reason, the attorney general declined to meet with the board. The minutes show that the board opened bids for the House of Correction on 3 May 1875, but, because the attorney general was not in attendance, it deferred consideration of them until 5 May. On that date the board met as scheduled. The attorney general was again absent, and it was disclosed that he had not answered the governor's telegram notifying him of the meeting. The meeting was rescheduled for the 10th, and when the attorney general again failed to appear it was rescheduled once more for the 13th. The elusive legal officer failed to show up on the 13th as well.[8]

The attorney general's peculiar behavior may not have been without purpose. There was, at this earliest involvement of the board in major public contracting, a clear suspicion of what in modern parlance might be called "hanky–panky." At its aborted meeting of 10 May (and without any reasons being reflected in the minutes), the board directed the governor "to notify the firms making proposals for House of Correction to disclose by Thursday next the names of the persons comprising said firms, otherwise the bids would be rejected." It was also agreed, according to the minutes, "that no assignment of any bid would be permitted but that such bidder as had the contract awarded to him must substantiate his bid with the proper bond and could not be allowed to transfer it to any other person."[9]

On the 13th, still without the attorney general, the board reported that no information had been received from two of the bidders, and accordingly their bids were rejected. The next lowest bidder responding, Thomas Binyon and Company, was notified to substantiate its bid—i.e., to file its bond. This Binyon did on 17 May. On 28 May, however, Binyon notified the board that it would not enter into a construction contract unless the price were increased and the cost of the building reduced. The board rejected that proposal and invited the next bidder, John Q. Codling, to enter a contract. Finally, on 22 June 1875 this was done—still, apparently, in the absence of the attorney general.[10]

The board's role in this venture was not limited to approving a single contract, although that proved difficult enough. It contracted with the B & O for an extension of the switching station at Jessup (the state to furnish the crossties and reimburse the B & O for its labor cost, the B & O to furnish the rail and equipment), and then fought with the B & O about the labor cost billed to the state. The board also contracted for the building of sheds to protect the mountain of bricks delivered to the site. In short, the board oversaw the construction project, receiving reports and examining, questioning, negotiating, and approving the payment of bills for labor, material, and architect fees. On 13 June 1876 the board made a personal on–site inspection to examine the work in progress.[11]

This detailed involvement by the Board of Public Works continued with the construction of the normal school and, pursuant to legislative authorization, with the building of a state tobacco warehouse.[12] It was, in fact, in connection with the need for additional warehouse capacity that the board first considered and approved a lease for property on behalf of the state. On 23 May 1876 the board received a report from the supervisor of tobacco warehouses that a large number of hogsheads of tobacco

8. BPW Minutes, 3, 5, 10, 13 May 1875, vol. 1851-83, pp. 273-76.
9. Ibid., 10 May 1875, p. 275.
10. Ibid., 13, 28 May, 22 June 1875, pp. 276, 278. The *Sunpapers* dutifully reported the several meetings of the board and noted the absence of the attorney general but offered no comment on the matter. See *Baltimore Morning Sun,* 4, 11, 14 May 1875.
11. BPW Minutes, 22 June, 30 November 1875, 11 January-13 June 1876, vol. 1851-83, pp. 279-87, 294.
12. Acts of 1876, ch. 316, directed the board to rebuild a warehouse in Baltimore City that burned, and in doing so, to cause a plan and specifications to be made of the contemplated new warehouse, to advertise for proposals for the work, to appoint the architect, and to give the contract to the lowest bidder. See BPW Minutes, 19 May 1876, vol. 1851-83, pp. 289-90, where the construction bid was approved, and 5 June 1876, p. 293, where the contract was approved.

remained uninspected because of a lack of warehouse space and that a nearby refinery building could be rented for five months for $1,000. The board approved the lease.[13]

Among its other duties, the board also assumed command of the State House building. Not only did it superintend extensive renovations authorized in 1876, but it investigated a complaint by the Annapolis Water Works that water was being wasted in the State House and, on 27 March 1879, granted a Mr. Mayer "permission to take Photographs of certain painting in the State House provided he does not remove them from the walls, and that he must notify the Governor when he is ready to take the same." The board also arranged for lightning rods to be installed on the building and saw to the repair of the dome. It was in connection with the dome repairs that the board for the first time employed an outside consultant—an engineer from Johns Hopkins Hospital—and received a (two-year) guarantee of the repair work by the contractor.[14]

As with most of its new duties, the board's particular responsibility for the State House was the product of specific legislative direction and delegation, some of which now seems amusing. It appears from some of this legislation that, in those Victorian times, the State House was not the nicest place in which to work. For one thing, the building was regarded as a fire hazard; for another, it lacked a decent ventilation system. In 1884 the General Assembly directed the board to remove the boilers and furnaces to a different building—i.e., to have heat imported from an outside heating plant—and to assure that "no furnace or steam boiler shall be placed in any part of the state house building." In the same act it told the board to construct a ventilating apparatus for the two halls of the General Assembly (there presumably being too much uncirculated hot air). In 1890 the General Assembly authorized the board to buy a 1,000-foot fire hose to protect the building.[15]

Conditions in the State House apparently did not improve very much. In 1892 the legislature ordered the board to remove the "water closets" and build an annex to house them, also to clean the basement, get rid of the trash there, repair or replace the furniture and "hangings" in the executive chambers, and, once and for all, provide a proper and efficient ventilation system.[16] And so the board exercised a few janitorial duties.

The board also became the state's procurer and collector of art. Beginning in 1894 the General Assembly periodically manifested a desire to commemorate the state's glorious past, and at the same time to beautify the public buildings, by commissioning paintings of one kind or another. It charged the board with commissioning these works, negotiating with the artists, and seeing to the proper placement of the paintings when completed. In 1894, for example, the legislature authorized the board to purchase from artist Frank B. Mayer *The Planting of the Colony of Maryland under Leonard Calvert* for an amount not exceeding $4,000.[17]

The legislature must have liked Mayer's work; in 1898 it authorized the board to purchase another of his paintings, *The Burning of the Peggy Stewart,* for $2,000. Beginning in 1900 the General Assembly looked to the board not only to negotiate with the artist but actually to *select* the artist. In that year it appropriated $600 for a painting of Henrietta Maria, for whom the state was named, leaving it to the board to find a suitable artist.[18] The board chose Florence MacKubbin. Similarly, in 1906 the board commissioned Katharine Kent Walton to do portraits of Matthew Tilghman

13. BPW Minutes, 23 May 1876, vol. 1851-83, p. 290. The next reference to a lease approval was on 13 February 1877, p. 305, when the board approved a lease with the Potomac Lock and Dock Company.
14. Ibid., 6 December 1876, 27 March, 19 June 1879, pp. 298, 317, 319-20. The "Mr. Mayer" is almost certainly the Annapolis artist Frank B. Mayer, from whom the General Assembly purchased two paintings, as detailed below.
15. Acts of 1884, ch. 286; 1890, ch. 454.
16. Acts of 1892, ch. 245.
17. Acts of 1894, ch. 507.
18. Acts of 1898, ch. 91; 1900, ch. 720.

and Gov. Robert Bowie, delegating to "the President of the board [i.e., the governor] to arrange with Miss Walton as to her compensation, etc."[19] In 1910 Walton was employed to paint Francis Scott Key for $300.[20]

The actual management of state property in those halcyon years was not a major problem largely because, aside from the Fishery Force vessels, discussed below, there was little property to manage. A report received by the board in December 1904 showed that the state owned but twenty–two pieces of real estate: the State House, the governor's mansion, the governor's stables, five "homes" or asylums, two correctional institutions, two normal schools (Towson and Frostburg), the Maryland Agricultural College (today the University of Maryland), the Fifth Regiment Armory, five tobacco warehouses, one hospital, one lighthouse, and one other armory. The title report on these properties, prepared by Baltimore attorney Frank V. Rhodes, noted that "there is nothing in the records that shows that the State has a record title to the ground on which the State House stands except a plat." Rhodes had no doubt that the colony possessed good title when it moved the capital from St. Mary's City; he simply could find no records to prove it.[21]

One aspect of property management that assumed increased importance was insuring some of the public buildings, a responsibility also committed to the board. Each year, commencing at the latest in 1892, the board solicited bids and awarded insurance contracts on the tobacco warehouses, the governor's mansion and stables, the normal school, and, as new facilities were built or acquired, those as well.[22] It does not appear that the State House itself was ever insured.

The board's responsibilities for the acquisition and care of public property soon extended beyond public buildings. In June 1878 it approved construction of a telegraph line from the House of Correction at Jessup to police headquarters and the Maryland Penitentiary in Baltimore City, as well as a lease (at $200 a year) of the equipment necessary to make it functional. By 1882 the board had provided a telephone line from the House of Correction to City Hall, but then decided to get out of the communications business. On 25 May 1882 the board accepted a proposal from the Maryland Telephone Company that it take over the line and be allowed to place other subscribers on it, provided there be no charge to the state for the telephone instruments.[23]

What first thrust the board into the vortex of public controversy was the dispute between Maryland and Virginia watermen over the oyster beds lying in Maryland's part of the Chesapeake Bay. As early as 1865 the General Assembly had enacted legislation restricting the catching of oysters in state waters, but, as the oyster trade grew more profitable, poaching and "depredation" became increasingly common. This was one of the most serious and persistent issues before the legislature, and in nearly every session for a decade or more the General Assembly passed legislation of one type or another relating to it.[24]

Early on, in 1865, Governor Bradford told the legislature that draconian measures—the seizure of violators' boats, criminal sanctions—were proving ineffective. He suggested, as an alternative, a modest tax on oysters taken from state waters so that the state could at least realize some revenue from the bay, its most precious natural

19. BPW Minutes, 28 June 1900, vol. 1883-1905, p. 270; 19 April 1906, vol. 1 (1904-12), p. 295.
20. Acts of 1910, ch. 547; BPW Minutes, 6 June 1910, 1:449.
21. BPW Minutes, 20 December 1904, vol. 1883-1905, pp. 391-92.
22. Ibid., 2 March, 7 September 1892, 3 May, 12 December 1894, 10 April 1895, pp. 170, 184, 210, 221, 224.
23. Ibid., 3 June 1878, 25 May 1882, vol. 1851-83, pp. 311-12, 382.
24. Acts of 1865, ch. 181. See also Acts of 1867, ch. 184; 1868, ch. 406; 1870, ch. 364; 1872, ch. 167; 1874, ch. 181.

resource. But the General Assembly was more interested in a protectionist policy, reserving the oyster catch to Maryland watermen and not requiring them to pay a tax. Its response was a requirement that all persons catching or selling oysters have a license issued by the comptroller, coupled with the provision that only Maryland residents could qualify for such a license.[25]

Naturally, this licensing requirement did not stop the Virginia watermen from operating in Maryland waters. To make matters worse, the Virginians used dredges and scoops that caused serious damage to the oyster beds. Some of the Maryland watermen also used these methods and were no more averse than the Virginians to operating during the prohibited summer season. Those Maryland watermen who were being hurt by the predatory competition demanded state protection.

The legislature responded—slowly at first but with increasing determination—by creating what in effect was a state navy to patrol the bay and its tributaries. In 1867 the General Assembly authorized the comptroller to charter a steamer for up to ten days at a time to cruise the state's waters for the purpose of examining the licenses of anyone it found catching, buying, or selling oysters and arresting anyone caught violating the state law. Such casual enforcement methods were unavailing. At its next session (1868) the General Assembly moved more forcefully by (1) designating the governor, comptroller, treasurer, superintendent of labor and agriculture, and clerk of the Court of Appeals—a most unusual conglomeration—as the Board of Commissioners of the State Oyster Police Force, (2) appropriating $22,000 to purchase one steam vessel and two tenders, and (3) charging the commissioners with arming and equipping the vessels and keeping them in repair and appointing a suitable person to command the force.[26]

In 1870 the legislature authorized two additional sailing vessels, and in 1874 it authorized six more, each to have a cannon. Those areas of the state bordering the Chesapeake Bay and its major tributaries were divided into six districts, four of which were to be guarded by at least one sloop and two by at least two sloops. The steamer was to be on constant patrol throughout the six districts. This force, renamed in 1872 the State Fishery Force, was headed by a commander, who captained the steamer, and six deputy commanders, one for each district. Each deputy commander captained the sloop assigned to his district. The commander and deputy commanders were appointed by the Board of Commissioners of the State Oyster Police Force for two-year terms but could be removed sooner for incompetency or neglect of duty.[27]

In 1880 the General Assembly did away with this Board of Commissioners and vested the sole responsibility for acquiring and operating the flotilla in the Board of Public Works. The board was empowered to appoint the commander and deputy commanders, to remove them or any officer of the force for neglect of duty or incompetency, and to keep the vessels in good repair.[28]

The first recorded exercise of the board's new authority came on 20 May 1880, when it granted permission to the governor's guards to use the steamer *Leila*, the flagship of the Fishery Force, for an excursion to Chestertown.[29] The board did, how-

25. "Message of Governor Bradford to the General Assembly of Maryland" *Senate Journal and Documents* (Annapolis, 1865), doc. A, pp. 1-32; Acts of 1865, ch. 181.
26. Acts of 1867, ch. 184; 1868, ch. 406.
27. Acts of 1870, ch. 364; 1874, ch. 181; 1872, ch. 243.
28. Acts of 1880, ch. 198.
29. BPW Minutes, 20 May 1880, vol. 1851-83, p. 325. Two years later the board took a different view. On 15 June 1882 it rejected a similar request from the Free Excursion Society of the City of Baltimore and directed the secretary to respond that "there is a standing order of the board against the use of the boats of the Force for any such purposes." This referred to a directive issued on 29 September 1881, that no commander or deputy commander could use the boats "for any purpose, except for the performance of the duties to which said vessel is assigned, and that no pleasure parties shall be transported at any time or for any distance on any of said vessels." Ibid., pp. 384, 372. Similarly, on 6 December 1883 the board rejected a petition from the Cornet Band of Pikesville to use the state arsenal for musical purposes, directing the secretary to advise the band that "the board is without any dispensing authority and that the arsenal is for military not musical purposes." Ibid., 6 December 1883, vol. 1883-1905, p. 2.

ever, soon undertake more serious business with respect to the Fishery Force. In June 1880 it appointed the commander and deputy commander. In August of that year the board authorized repairs to the *Leila,* and in September it approved the purchase of a schooner.[30]

Acting as the state's admiralty involved more than purchasing, equipping, and repairing ships. The board also became the focal point for complaints about the way its navy operated. Some citizens complained that the force was not aggressive enough; others, apparently those who were apprehended, complained that it was too aggressive. In either case, the board was called upon to listen to these complaints and to hold quasi–judicial hearings into the efficiency of the force in general and the competence of the officers in particular. Complaints were heard from Somerset County and Annapolis watermen on 4 February 1881, again from the Annapolitans on 22 December 1882, from the state's attorney for St. Mary's County Daniel Hammett in March 1883 and from his counterpart Daniel M. Henry in Dorchester County later the same month. More complaints were heard in December 1883.[31]

The complaints against the Fishery Force generally concerned the lack of protection—the "depredations of Dredgers and the inability of the Police sloop to give the necessary protection." The board responded for the most part by summoning the commander and his deputies and ordering them to be more vigilant. Occasionally it issued more direct orders. On 6 December 1883, for example, the board ordered the sloop *Governor Hamilton* [32] to the Choptank River, where it was to establish a line from Black Walnut Point to Sharps Island and from Sharps Island to James Point and to remain there and enforce an observance of the line.[33] There was little else the board could do except to make sure that the fleet remained in good repair.

Some of the complaints concerning the Fishery Force were more particular, including charges leveled against individual officers. On 8 April 1881 the board conducted a hearing of sorts into charges against Capt. J. B. Wilson of the sloop *Mary Compton.* In September 1881 it considered complaints against Capt. C. J. B. Mitchell and actually examined witnesses. Mitchell, who was acquitted of wrongdoing, subsequently asked the board to pay his counsel fees. On 19 January 1882 the board rejected the request, noting that there were "no funds out of which the same could be paid."[34]

Occasionally these complaints were of a pecuniary nature. Several times, for example, crew members grumbled about not being paid on time, and on 10 July 1884 the board announced that the failure of any deputy commander to pay his crew promptly would be deemed sufficient cause for his immediate removal from the service. Some problem must also have arisen about the deputy commanders ordering repairs to their vessels without proper authority, for on 29 September 1881 the board decreed that no commander or deputy commander should "create any debt for repairs or otherwise for or on account of any vessel under his command, without the previous sanc-

30. Ibid., 8 June, 5 August, 9 September 1880, vol. 1851-83, pp. 335, 337-39.
31. Ibid., 4 February 1881, 22 December 1882, 8 March, 22 March 1883, pp. 342, 409, 413-14; 6 December 1883, vol. 1883-1905, p. 2.
32. The board apparently adopted the practice, without recorded discussion, of naming the sloops after the mothers, wives, and daughters of the members of the board, and later after the board members themselves. The first sloop purchased by the board, the *Ida Moore,* was renamed the *Julia Hamilton,* probably after the daughter of Gov. William T. Hamilton, who served from 1880 to 1884. The sloop *Mary Compton* was probably named for a relative of Treasurer Barnes Compton. Other sloops were named the *Bessie Woolford* (the comptroller being Levin Woolford) and *E. B. Groome* (the governor being James B. Groome), the *Nannie Merryman* (an earlier treasurer *[1870-72] being* John Merryman), and the *Louisa Whyte* (the governor being William Whyte). Later vessels were named for the members themselves, as with the *Governor Hamilton,* the *Thos. J. Keating* (a state comptroller), and the *Governor Robert M. McLane.* At some point this practice changed, perhaps because the fleet became so large that there were not enough worthy public officials to supply names for all the boats. By 1916 most of the original boats had been scrapped or retired from service, and the new boats were either named after the counties or sported such names as *Music, Archer, Snookums, Murray, Buck, Folly,* and *Frolic.*
33. Ibid., 22 December 1882, vol. 1851-83, p. 409; 6 December 1883, vol. 1883-1905, p. 6.
34. Ibid., 8 April, 29 September 1881, 19 January 1882, vol. 1851-83, pp. 349, 372, 378.

tion of this board." Later, on 25 June 1885, the board became more bureaucratic, notifying the deputy commanders that no bills contracted by them would be approved unless accompanied by a properly countersigned requisition from the commander.[35]

Other complaints against the officers of the Fishery Force had to do with their competence and efficiency, and those, too, had to be heard by the board. At its meetings on 19 and 23 December 1884 the board considered the charge that Captain Franklin of the *Nannie Merryman* had improperly absented himself from the ship and was therefore neglectful of his duty. The board ultimately dismissed the charge, but it did admonish the captain that it "would look to renewed attention to his duties, and a more strict observance of all orders coming from Commander of the Force." Charges against Captain Childs were heard in March 1881, and in June 1884 the board agreed to hear a protest by the first officer of the *Governor Hamilton* against his dismissal.[36]

All of these naval matters no doubt took up a great deal of time; the board minutes show a substantial preoccupation with them throughout the 1880s and 1890s. Indeed, as late as 1914 the minutes show considerable time and attention being given to the election of officers of the Fishery Force, which became increasingly politicized,[37] and to the condition of the fleet, which was not always the best. In addition to fending off citizens' complaints, hearing charges against various officers, and authorizing repairs, the board let contracts for new vessels, employed experts to evaluate the vessels prior to acceptance by the state to ensure that they met performance specifications, dickered with contractors over problems with the boats, ordered equipment for the boats (down to a $16.30 spy glass), employed watermen to guard vessels seized under the oyster laws, pressed state's attorneys to enforce the law more vigorously, and arranged for the sale of worn-out vessels.[38] On 2 July 1884 the members of the board personally inspected the entire fleet, having ordered it to Annapolis for that purpose. They did so again in July 1900.[39]

In general, it appears that the Board of Public Works discharged these various duties with fairness and compassion, if not with particular diligence. There were constant complaints about the condition of the fleet, and it appears that they often had merit.[40] The board's general reaction, as noted, was to bring the commander of the fleet in and order him to correct or improve whatever was being complained about. Occasionally the board must have become exasperated with its role as an admiralty board, as witness this excerpt from the minutes for 20 January 1887: "A petition of citizens of the eighth district of Anne Arundel County, asking that they be furnished with a cannon to protect oyster grounds from depredation, was presented to the board and ordered to be filed. The board decide that they have no authority for such proceedings—besides they have no cannon."[41]

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35. Ibid., 10 July 1884, vol. 1883-1905, p. 21; 29 September 1881, vol. 1851-83, p. 372; 25 June 1885, vol. 1883-1905, p. 44.
36. Ibid., 19, 23 December 1884, vol. 1883-1905, pp. 33-34; 11 March 1881, vol. 1851-83, p. 346; 11 June 1884, vol. 1883-1905, p. 18.
37. See ibid., 15 August 1910, 1:451, for an example of the political interest in the appointment of officers. Some recommendations pointedly carried the endorsement of the Democratic State Central Committee. At this meeting "Senator Dodson, of Talbot County, accompanied by a large delegation from said county appeared before the board to urge the appointment of Owen H. Higgins as Deputy Commander of the 'Eliza Hayward.'" Other luminaries also appeared to support their candidates.
38. See, for example, Acts of 1882, ch. 275, directing the board to sell the *Lelia* —"so decayed that she is unseaworthy"—and to buy or cause to be built two suitable tugs or propellers as replacements.
39. BPW Minutes, 2 July 1884, 20 July 1900, vol. 1883-1905, pp. 20, 272.
40. The minutes for 20 July 1900 show that the board had the fleet brought to Annapolis for inspection and found it to be "in bad condition in all details, the bedding was filthy and in miserable condition, guns, small and large rusty and unfit for use, sails only a year old so neglected as to be very much injured and rigging in bad repair." Commander Howard was ordered to take immediate steps to have the boats put in good repair. Ibid., p. 272.
41. Ibid., 20 January 1887, p. 72.

We have seen how, in the management of the Fishery Force, the board came to exercise a fair amount of patronage, appointing the commander and an increasing number of deputy commanders. The legislature must have been favorably impressed with the manner in which the board carried out that responsibility, for it soon placed additional appointments, of an even more sensitive nature, in its hands.

In 1878 the General Assembly created offices of tax commissioner and insurance commissioner and provided for the appointments thereto to be made by the governor, comptroller, and treasurer. Although the board as such was not designated as the appointing authority, its minutes show that the three designated officials exercised their power while sitting as the Board of Public Works.[42] These were significant appointments, each for a four-year term. The tax commissioner was responsible for the assessment of all corporate stock for state tax purposes; the insurance commissioner licensed all insurance companies and their agents and had the authority to examine the companies and revoke licenses if he found an insolvency or other violation of law.

Subsequently the board's appointment powers were extended to the bank commissioner, the state auditor, and the shell fish commissioners, when those offices were created.[43] The board retained most of those appointment powers until 1922, when, in the course of a comprehensive reorganization of the executive branch, they were vested in the governor alone.

Another new area of responsibility imposed on the Board of Public Works was that of public finance—superintending the issuance, management, and redemption of the public debt. This, too, started small and grew larger.

With the exception of the two correctional institutions and the two normal schools, there were very few public construction projects of any significance until a decade or so into the twentieth century, and thus the need for new borrowed capital for construction purposes was limited. Indeed, the immediate post-Civil War era actually saw a substantial reduction in overall state debt. When the war ended in 1865 the state had an outstanding debt of over $14 million against which there were sinking fund balances totaling $8.3 million. By 1899 the aggregate debt had been reduced to $5.7 million against which there were sinking fund balances of $2.6 million.[44] The state did continue to float general obligation bonds, however, not to provide new capital but rather to refinance, in whole or in part, existing loans about to mature. These were, in effect, "redemption" or "exchange" loans, and they required the board not only to do the routine work of advertising the proposal, preparing certificates, and receiving and opening bids, but also to supervise the exchange of securities. In the process the board had to determine what proportion of the new issue, if any, should be purchased for the state sinking funds.[45]

An early example of this activity was the defense redemption loans of 1880 and 1882. In 1868 the General Assembly had authorized $4 million in state bonds, the proceeds of which were to be used to discharge Maryland's obligation for bounties paid to soldiers who had enlisted in the Union army. Apparently $3 million of these bonds had been sold to the public, with the treasurer having been authorized to purchase

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42. Acts of 1878, chs. 178, 106; BPW Minutes, 23 June 1886, vol. 1883-1905, p. 63.
43. Acts of 1910, ch. 219; 1912, ch. 58; 1914, ch. 265. See also chapter 7.
44. "Annual Report of the Comptroller of the Treasury, 1865," *S. Jour.* (1866), doc. B, app., statement J, pp. 14-15; "Annual Report of the Comptroller of the Treasury, 1899," *Maryland Documents* (Baltimore, 1900), app., statement J, p. 22.
45. It was common practice for the board to purchase state bonds for the sinking funds, thereby not only making such funds productive in secure investments but also helping to create a market for the new issue. This practice was authorized by Acts of 1884, ch. 383, which permitted the treasurer, with the concurrence of the governor and the comptroller, to invest the sinking funds in "stocks or bonds of this state, or in such other productive stocks or bonds as [they] may consider safe and reliable." See also Acts of 1884, ch. 419, directing all surplus in the treasury to be credited to the sinking fund and invested as the treasurer, governor, and comptroller agree.

$1 million for the state's sinking fund. The bonds were due on 1 January 1884 but, rather than redeem them in cash, the General Assembly decided to refinance them. In 1880 the legislature enacted a defense redemption loan of $3 million, directing the board to sell the new bonds or to exchange them at par for the 1868 bonds. If, and to the extent, the bonds were sold for cash, rather than exchanged, the board was to apply the proceeds toward the redemption of the old bonds.[46]

The 1880 act, for whatever reason, was not implemented, and in 1882—the next biennial session—the General Assembly authorized a new redemption loan of $3 million with somewhat more favorable terms to the state.[47] The basic provisions of the two acts were similar. In June 1883, after placing the advertisements, the board received and considered bids, eventually selling $1,331,086 at a slight premium and $566,740 at par and exchanging $1,094,802 at par for the 1868 bonds.[48]

Similar loans were authorized in 1886, 1888, and 1890.[49] The board did not always have an easy time with these loans. With the 1886 loan refinancing $1,896,000 of 1872 bonds, for example, it received no initial bids. On 8 June 1886 it accepted a private offer from James Sloan to take whatever the state did not want for its sinking fund and awarded him $491,200 of the issue. A week later, however, the deal was rescinded by mutual consent, and the holders of the 1872 bonds were given additional time to exchange their bonds for the new ones.[50]

In 1890 the legislature made the board, in effect, the custodian of the securities owned by the state sinking fund. It is not entirely clear what prompted this move, but it (1) required the board to count all securities purchased for the fund, which the board did quarterly, (2) directed that all such securities be kept "in some safe deposit company in the City of Baltimore, to be selected by the treasurer with the approval of the board of public works," and (3) prohibited the treasurer from having access to the safe deposit box unless accompanied by the comptroller or some other person appointed by the board.[51]

The major role envisioned for the Board of Public Works in 1851 was to make the state's investments in the various railroad and canal companies as productive as possible. By 1864 its intended function was quite different: it was to dispose of those investments, and to do it expeditiously. In the end, it took nearly fifty years to comply with that mandate.

The C & O Canal Company—the project that more than any other led to the creation of the board—continued to be a thorn in its side until 1906, and even its demise was unpleasant and fraught with controversy. The board was under a constitutional mandate to liquidate the state's investment in the company—to the interested counties, if possible. The problem, of course, was that no one wanted what was perceived to be a chronic loser. And so the board continued to attend stockholders' meetings, elect directors, fend off as best as possible the not always gentlemanly competition from the B & O,[52] arrange for the ever–increasing repairs to dams and other structures and arbitrate the competing economic interests involved in the setting of toll schedules.

46. Acts of 1861, ch. 235; 1880, ch. 232.
47. Acts of 1882, ch. 289. The 1882 act provided for a slightly lower interest rate, a 15–rather than 14–year bond, and required the board to advertise for bids in London, New York, Philadelphia, and Baltimore. The 1880 act had merely required advertising in "one or more newspapers."
48. BPW Minutes, 3 June 1883, vol. 1851-83, p. 423.
49. Acts of 1886, ch. 449; 1888, ch. 201; 1890, ch. 305.
50. BPW Minutes, 8, 17 June 1886, vol. 1883-1905, pp. 61-62, 64.
51. Acts of 1890, ch. 571.
52. See, for example, BPW Minutes, 7 April 1876, 11 April 1877, 14 June 1883, vol. 1851-83, pp. 288, 307-8, 427, at which the board approved reductions in tolls to meet competition from the B & O.

As the company slipped inexorably into insolvency, from which it was never very far removed, the board was also faced with defending attachments and executions by individual creditors against C & O property and periodically directing the various state's attorneys to intervene in those actions in order to protect the state's interest.[53]

During the incumbency of Gov. William T. Hamilton (1880-84), a split occurred on the board pertaining to the C & O, the governor consistently opposing (and being outvoted by) Comptroller Thomas J. Keating and Treasurer Barnes Compton. The minutes do not reflect the source of the conflict, but it may have been partisan in nature. The president of the C & O was Arthur P. Gorman, one of the undisputed political powers in the state;[54] on 7 June 1880 the governor voted to replace the president and directors of the C & O, but lost. Thereafter nearly every issue involving the C & O was decided by a two–to–one vote, the governor losing.[55] This division on the board spread also to other political or patronage decisions. The same split occurred in August 1882 with the appointment of the insurance and tax commissioners, in November and December 1882 with the selection of B & O directors, and in April 1883 with the election of a captain for a new Fishery Force steamer.[56]

The state's investment in the C & O Canal Company was not inconsiderable. By 1904 it consisted of \$3,375,000 in mortgages, \$4,375,000 in preferred stock, and \$788,000 in common stock, not to mention arrearages in interest and dividends. The board had made three determined efforts to sell the company, all in vain. In 1895 it advertised for bids and received three. One was for \$310,000 in cash, unconditional; a second, from the Washington and Cumberland Railroad, was a ninety–nine–year lease at \$13,000 annual rent, redeemable upon payment of \$300,000; the third, from the West Virginia Central, was for \$526,000, conditioned on the buyer being subrogated to the state's interest and the company property being sold at public auction within one year. The bids were rejected.[57]

The second effort to divest the state's interest in the C & O was made in February 1899. Once again the board advertised, but received only one bid—from Charles Lord, apparently on behalf of the B & O, for \$300,000 cash. This bid was also rejected. Later that year the board tried a third time and received two bids. Lord bid \$425,000, but that was conditioned on all liens (about \$200,000 worth) being discharged. The West Virginia Central bid \$400,000 on the same basis, the highest *net* bid thus being \$225,000. These bids also were rejected by the board.[58]

Finally, in 1905 the Board of Public Works "bit the bullet" and got rid of the C & O Canal Company for \$155,000. But not without a struggle. The advertisement produced two bids—one from J. H. Wheelwright, presumably representing the Western Maryland Railroad, for \$151,000 in state bonds, at par, and the winning bid from Fairfax S. Landstreet, supposedly on behalf of the B & O, for \$155,000 in state bonds. When the *Baltimore American* learned of these bids, it ran a story headlined "Rumors

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53. Ibid., 25 August 1875, 26 September 1877, pp. 280-81, 303.
54. Gorman served in the House of Delegates from 1869, becoming its speaker in 1879. He later became a state senator, president of the Senate, and chairman of the Democratic State Central Committee. From 1885 to 1897 he served as U.S. senator. According to James B. Crooks, "Maryland Progressivism," in *Maryland*, ed. Walsh and Fox, p. 592, "Gorman controlled Maryland politics from 1875 until his death in 1906. A personally devout, modest, and generous man, he was one of the most astute politicians in an age of rough and tumble partisan politics." In 1920 the General Assembly sought to have his portrait painted and hung in the State House, but Gov. Albert C. Ritchie vetoed the measure. See Acts of 1920, ch. 734. It was not unusual, of course, for presidents of the C & O to be politicians, or for politicians to be president of the C & O.
55. BPW Minutes, 7 June 1880, vol. 1851-83, pp. 332-33; 6 June 1881, pp. 360-64 (salary of C & O president and directors, proposal to direct the C & O to lengthen certain locks); 5 June 1882, pp. 383-84 (election of president and directors); 17 August 1882, pp. 394-95 (election of president and directors); 3 June 1883, p. 426 (election of president and directors).
56. Ibid., 17 August, 23 November, 14 December 1882, 6 April 1883, pp. 394-95, 406-7, 408, 418.
57. Ibid., 22 December 1904, vol. 1883-1905, pp. 354-67.
58. Ibid., 7 February, 11 December 1899, pp. 262-63, 267.

of Deal in C & O Canal." The asserted "deal" was between the two railroads, with the Western Maryland getting the portion of the canal above (west of) Hancock and the B & O getting the balance. "Any agreement between the Baltimore and Ohio and Western Maryland," said the article, "would practically include an agreement with the Pennsylvania Railroad Company, which is the power behind the Baltimore and Ohio."[59]

The state treasurer, Murray Vandiver, was very much opposed to the sale, expressing the belief that the company was worth far more than the price bid for it, but he was outvoted by Gov. Edwin Warfield and Comptroller Gordon Atkinson. The board did, however, insist on one condition. The buyer, Landstreet, had to agree to obtain the consent of the C & O stockholders to an amendment to the company charter waiving the company's exemption from state taxes in the event railroad tracks were ever built on the company's property. This condition was reported satisfied by October 1905.[60] And so, 120 years after it made its first investment in the C & O venture, the state was finally clear of the mess.

Getting rid of the B & O was not much easier. A good bit of the preferred stock had been sold during the 1870s, as noted above, but the state still owned nearly 10,000 shares plus 5,500 shares in the Washington Branch of the B & O, a separately capitalized entity that was always regarded as somewhat special.[61]

It will be recalled that article 12, section 3, of the Constitution of 1867 drew a number of distinctions among the various internal improvement companies in terms of their sale by the state. The 6 percent preferred stock in the B & O could be exchanged for state bonds, at par, without further legislative direction. Stock in the Washington Branch could not be sold at all, and the sale of other companies was to be in accord with conditions established by the legislature.

Acting pursuant to this authority, the Board of Public Works managed to dispose of 9,686 shares of B & O preferred stock in 1890. Because by article 12, section 3 the consideration had to be "an equal amount of the bonds or registered debt now owing by the State" rather than cash, the transaction was two phased. On 22 May 1890 the board entered into two agreements with E. R. Bacon of New York. Under the first agreement Bacon agreed to purchase $1,242,300 in 3 percent state bonds (this being part of the 1889 exchange loan authorized by Acts of 1888, chapter 201) at 101 percent and to pay for the same in cash by 15 June 1890. By the second agreement the state agreed to exchange its 9,686 shares of B & O preferred stock, valued at $1,259,200, for the bonds, valued at par.[62] The difference in values was, of course, largely resolved by the 1 percent premium paid for the bonds.

As things turned out, the state got a good price for the stock ($130 a share). In 1896 the B & O went into receivership, and by the time the state was able to unload the rest of the preferred stock in November 1898, the best price it could get was $75 a share. The state sold some of the stock to Johns Hopkins University and some to a New York firm.[63]

To the extent that the distinction drawn in section 3 of article 12 of the Constitution of 1867 created any impediments to the sale of the other state investments, they were effectively removed by legislative action in 1890 and 1892. At last, it seemed, the General Assembly was getting serious about divesting the state of these corporate interests.

The first move was the proposal of a constitutional amendment, ratified by the voters in 1891, that rewrote section 3 of article 12 as follows:

59. *Baltimore American,* 12 December 1904, p. 11.
60. BPW Minutes, 4 January 1905, vol. 1883-1905, pp. 374-75; 4 October 1905, 1:176.
61. See chapter 2; Acts of 1831, ch. 330; 1832, ch. 175.
62. BPW Minutes, 22 May 1890, vol. 1883-1905, pp. 133-34.
63. Ibid., 17, 29 November 1898, pp. 259, 260-61.

> The board of public works is hereby authorized subject to such regulations and conditions as the General Assembly may from time to time prescribe, to sell the State's interest in all works of internal improvement, whether as a stockholder or a creditor, and also the State's interest in any banking corporation, receiving in payment the bonds and registered debt now owing by the State, equal in amount to the price obtained for the State's said interest.[64]

This, of course, permitted the sale of all remaining investments, including that in the Washington Branch, subject to conditions set by the legislature.

Acting pursuant to this authority, the General Assembly in 1892 adopted a set of procedural regulations for the sale of these investments, other than the stock in the Washington Branch, which was exempted from the act. Essentially the law required the Board of Public Works to advertise for sealed proposals and to select the highest bid. The board was authorized to reject all bids, however, if the highest price "should in their judgment be insufficient," in which event the board was allowed to sell the securities "at private sale upon the best terms and highest prices which they can obtain therefor." Finally, the act empowered the board to employ agents to assist it in making the sales.[65]

With the exception of the first futile attempt to dispose of the C & O, nothing much was done by the board under the 1892 act. In 1896 the legislature made it a little easier. For one thing, the General Assembly specifically authorized, and indeed directed, the sale of the 5,500 shares in the Washington Branch, plus the state's stock in the Annapolis Water Works (600 shares) and the Farmers National Bank (1,549 shares), and the mortgage of the Northern Central Railroad Company, securing the $90,000 annuity to the state. More important, although the act directed the board to proceed in accordance with the procedures set forth in the 1892 act, it permitted it to accept as payment an equal amount of outstanding state bonds.[66] Aside from the sale of the B & O preferred stock in 1898, there was little further activity, notwithstanding this act, until 1906 when, after a great deal of contention, the state was able to dispose of the Washington Branch stock.

The state, as noted, owned 5,500 shares of the Washington Branch stock, with a par value of $100 a share. The stock carried a 10 percent dividend, which made it an attractive investment in light of the 3-4 percent rate on state bonds. In 1897, however, the B & O stopped the dividends. The railroad claimed that it needed the money in order to help finance the cost of a new terminal in the District of Columbia; the state argued that the railroad's action was arbitrary and filed suit.[67]

By 1906 the situation had become tense and, indeed, a bit nasty. The state was holding an unproductive stock that it was unable to sell, primarily because no one but the B & O had any idea of its value. At some point the B & O offered $200 a share for the state's Washington Branch stock, an offer the state rejected. In early 1906 the General Assembly got into the act. By joint resolution 1, adopted 21 February 1906, it appointed four of the state's leading lawyers to assist the attorney general in prosecuting actions against the B & O to compel it to pay certain moneys alleged to be due to the Washington Branch and to the state. The resolution also designated a joint special committee to "thoroughly inquire into the value of the shares of stock owned and held by the state . . . in the Washington Branch . . . and into the policy on the part of the state of selling or retaining the same."

The legislature appeared to be in dead earnest. It conferred on the joint committee the power to compel the attendance of witnesses and the production of records, to administer oaths, and to report to the House of Delegates sitting as the grand inquest

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64. Acts of 1890, ch. 362.
65. Acts of 1892, ch. 310.
66. Acts of 1896, ch. 172.
67. BPW Subject File, MdHR 40242-6.

of the state under article 3, section 24 of the Constitution, any persons who failed to cooperate. The committee's report was due on or before 19 March 1906.

The report was not favorable to the B & O.[68] On the eve of its publication, and in an effort to avoid further unpleasantness, the board wrote to the B & O requesting that it make an offer for the stock. It received in return a stinging letter from B & O president Oscar Murray criticizing the report. On 20 March the board responded, expressing the hope that the B & O would offer $2,500,000 for the stock, more than double the previous offer of $200 a share. The railroad immediately replied that if the state offered the stock for sale the B & O would guarantee a responsible bid of $2,500,000. The board consulted the joint committee, which secured a resolution of the General Assembly urging acceptance. The price, said the resolution, was a "much larger sum than could be procured from any other source."[69]

The board decided to "cheerfully comply with the request of the Joint Special Committee" and so notified the railroad. It promptly advertised for bids, and on 28 March 1906 accepted a $2,500,000 offer from the Maryland Trust Company.[70] And so ended another long, rocky marriage.

The board was unable to dispose of the other major bank and railroad securities owned by the state until after 1910. But it did manage in 1889 to settle a long-standing dispute with the Susquehanna Canal Company, the Tidewater Canal Company, and the Philadelphia and Reading Railroad over monies due under a mortgage owned by the state.[71]

The state's relationship with the railroads extended beyond its role as stockholder and creditor. It also regulated them in a variety of ways, and it was not long before that responsibility also was delegated to the board. In some instances, this was an unpleasant and thankless task.

In 1882, for example, the General Assembly authorized the B & O to construct a bridge across the Susquehanna River as part of its branch line to Philadelphia, but it attached a number of conditions to that authority. One was that the railroad "first receive the approval of the board of public works of the plan and character of the bridge to be constructed; and said board shall be authorized to prescribe all necessary conditions for the construction and use of said bridge so as not to impede navigation."[72]

On 5 July 1883 the B & O presented its plans for a bridge at Port Deposit for board approval. The board deferred action in order to give interested persons an opportunity to present their views and conducted a hearing on 12 July for that purpose. The citizens raised a number of objections to the project. They apparently felt that the bridge as planned would interfere with navigation on the river. The board again deferred a decision. On 19 July the B & O agreed to amend the plans by raising the height of the bridge ten feet in order to meet the citizens' objections. Still the board took no action. On 26 July it met again to consider the proposal but decided to make a personal inspection of the site, which it later did. Finally, on 9 August the board approved the amended proposal, with the additional caveat that the B & O maintain a tugboat at the bridge during the season of open navigation to tow all vessels requiring towing. An amended application was submitted and approved on 30 August 1883.[73]

The same scene was replayed in 1907, when the B & O sought permission to reconstruct the bridge to accommodate a double track. Once again the local citizens

68. "Report of the Joint Special Committee," 2 April 1906, *S. Jour.* (1906), pp. 1847-67.
69. BPW Minutes, 17, 19, 20 March 1906, 1:263, 264-67, 269-72; *H. Jour.* (1906), pp. 1144-45.
70. BPW Minutes, 21, 22, 28 March 1906, 1:274-75, 278-79, 280.
71. Ibid., 31 January 1889, vol. 1883-1905, pp. 105-6.
72. Acts of 1882, ch. 223.
73. BPW Minutes, 5, 12, 19, 26 July, 9, 30 August 1883, vol. 1851-83, pp. 432, 434-37, 441.

protested, and the board was caught in the middle. First the board referred the matter to the U.S. War Department and then to the state attorney general. Finally it approved the proposal.[74]

In 1894 the General Assembly decided that railroad cars should no longer be heated by stoves, deeming them unsafe. It therefore passed a law prohibiting that practice after 1 July of that year. The legislature also recognized, however, that there was no way in which the railroads could comply with the law; all of the cars could not be converted to alternative heating systems by the deadline. So it passed another law, at the same session, that authorized the Board of Public Works to exempt individual cars—i.e., to grant an extension of time—if satisfied that it was impractical for a railroad to equip all its cars by the 1 July date. The board took the matter up in December 1894—there apparently being no real problem until winter—and quickly granted, in blanket fashion, every request.[75]

In 1902 the legislature created the position of state auditor and charged him generally with examining the books and accounts of all state officers and the clerks of courts, registers of wills, sheriffs, and state's attorneys. The state auditor, as noted earlier, was to be appointed by the governor, comptroller, and treasurer, acting jointly, and he could be removed by them as well notwithstanding his two-year term.[76]

The act directed the state auditor to make recommendations "as to changes in the conduct of such offices and in the method of keeping the books and accounts in the offices examined by him." More significant, it authorized the Board of Public Works, if it approved those recommendations, to "pass an order directing all officers accounting to the Comptroller to adopt and follow such method of conducting their offices, or of keeping their books and accounts." Though couched in rather broad language, the act in effect gave the board the power to "prescribe the systems of accounting and bookkeeping" for the offices mentioned.[77] This power was enlarged in 1916, when the General Assembly not only extended the jurisdiction of the state auditor to include all state offices, departments, boards, commissions, or institutions, "as the Board of Public Works may direct," but also empowered the board to prescribe a uniform fiscal year for all state officials and agencies (and all institutions receiving state aid) and to direct that such officials, agencies, and institutions keep their books in accordance therewith. The board retained its authority under these acts until 1922, when as part of the overall executive reorganization enacted that year it was transferred to the comptroller.[78] It now rests with the legislative auditor, an appointee of the General Assembly.

In 1904 the legislature imposed a whole new area of responsibility on the board—one that, over time, was to mushroom into a major undertaking—the control of purchasing. It started with stationery and routine office supplies.

In the first act the General Assembly authorized the Board of Public Works to purchase, through competitive bidding, all stationery, record books, and office supplies

74. Ibid., 17 October, 20, 27 November 1907, 1:377-83, 384-92, 393-96.
75. Acts of 1894, chs. 10, 269; BPW Minutes, 24 December 1894, vol. 1883-1905, p. 221.
76. Acts of 1902, ch. 257.
77. Ibid. See also 1 *Annual Report and Official Opinions of the Attorney General of Maryland* 113, 114 (1916) (hereafter *Op. Att'y Gen.*).
78. Acts of 1916, ch. 587; 1922, ch. 29.

for the entire state government. The state librarian was to notify the board of the needs of the legislative and judicial branches, and the secretary of state was to do the same for the executive branch; the board was then to advertise for bids.[79] Each year the board had to become involved in letting contracts for hundreds of these items—pens, pencils, ink, glue, rulers, and stationery.

Part and parcel of this responsibility was arranging as well for the necessary printing of legislative documents, also through competitive bidding. The 1905 contract called for 4,500 copies of the governor's message (4,000 in English, 500 in German), 3,000 copies of the comptroller's report, 1,000 copies of the treasurer's report, 300 copies of House and Senate bills, 1,500 copies of legislative acts and resolutions, and differing numbers of various other documents.[80]

By 1910 the Board of Public Works more or less settled into a routine—managing such state property as existed; superintending public construction and just moving into the field of public contracting generally; winding up its role as a board of admiralty; finally having disposed of most of the state investments in the banks, railroads, and canal companies; exercising some economic regulation; superintending the issuance and management of public debt; and performing a few other miscellaneous functions.

By and large these functions continued during the next decade, but in enlarged fashion. The board continued to handle the sale of an increasing number of state bonds. Between 1909 and 1920 state debt increased from $7.5 million to over $28 million, some $6 million of the increase being for the purpose of building and improving state roads.[81] The board also continued to let printing contracts, employ auditors to examine the books of state agencies, authorize the payment of routine bills, place insurance on state property, supervise public construction, and approve all leases entered into by the state or its agencies and rental payments due under them.

In 1916 the General Assembly turned to the board to extricate the state from an unexpected financial plight. Two years earlier the legislature enacted a comprehensive law for the protection of the state oyster industry. It created a Board of Shell Fish Commissioners and charged this board with, among other things, mapping and surveying the natural oyster beds and bars. The act then provided that the interests of any lessees under outstanding leases covering areas within the natural beds or bars, as established by the survey, were to be condemned by the state. The legislature evidently underestimated the value of these outstanding leases, however, for as the condemnations proceeded substantial judgments were rendered. At its next session, in 1916, the General Assembly concluded that "the interests of the state require that the said areas or lots should not be taken by the state at the amounts of said respective judgments," and it called upon the Board of Public Works to negotiate a reduction in those judgments.[82]

At the time judgments totaling nearly $260,000 had been rendered against the state. The legislature appropriated $75,000 to the board to settle the debts "for such amount or amounts as in the opinion of the Board of Public Works, may be fair, reasonable and proper" and directed that if unable to effect a settlement on those terms the board should abandon the condemnation proceedings from which such judg-

79. Acts of 1904, ch. 397.
80. BPW Minutes, 31 May, 23 November 1905, 1:158-59, 187-88.
81. See "Annual Report of the Comptroller, 1909," *Maryland House and Senate Documents* (Baltimore, 1910), p. 29; E. Brooke Lee, *Annual Report of the Comptroller of the Treasury* (Annapolis, 1920), pp. 31-53, MdHR 783218; Acts of 1914, ch. 267, authorizing a $6 million state roads loan.
82. Acts of 1914, ch. 265; 1916, ch. 582.

ments arose. The board rose to the occasion, and on 9 August 1916 effected a complete settlement of $257,985 in judgments for the $75,000 appropriated to it.[83]

The entry of the United States into World War I apparently had little significant effect upon the board—possibly because the country's participation was of such short duration. The only direct war–related duties in evidence were imposed by a 1917 act authorizing the board to acquire and clear any land needed by the United States government for a military camp in the state and a joint resolution in 1918 directing the board to seek compensation from the government for damage done to state roads by the shipment of supplies on heavy government trucks.[84] The board minutes, however, do not mention this resolution or indicate that it was ever carried out.

83. Acts of 1916, ch. 582; BPW Minutes, 9 August 1916, vol. 1A (1912-22), pp. 184-85.
84. Acts of 1917 (Spec. Sess.), ch. 1; 1918, joint res. 11.

CHAPTER 7

The Modern Board: 1920-1960

It is apparent from the preceding discussion that the Board of Public Works created in 1864 and continued in 1867 was intended to be one of relatively limited function. Its principal job was to dispose of the state's investments in the internal improvement companies as quickly as possible and to superintend those investments to the state's best advantage until they were sold. As has been noted, there is no indication in any of the convention debates that any of the delegates envisioned the board becoming a major policy-making entity or exercising a pervasive jurisdiction and influence over the administration of the state government. The term "public works" was thought to be essentially synonymous with the state's investments in internal improvement companies, and those were to be phased out and never replaced.

What happened in fact, of course, was that the legislature took a more expansive view of what "public works" encompassed.[1] In large part, these departures from the constitutional intent were necessary. Conditions changed, and new demands were placed on state government, requiring new types of public programs. These required, in turn, some person or entity to superintend them.

The legislature apparently gave little thought to this aspect of the matter. Government programs were created haphazardly—to meet this challenge or that one—without much regard to each other. There is no evidence of any grand design or plan to revolutionize the function of the board. Rather, it would seem that in enacting its various and sundry new programs, the General Assembly looked to the board simply because it was there and because it was a politically and functionally convenient repository of administrative authority.

Delegating to the board various functions concerning public property or expenditures was practical because it consisted of men who were already responsible for operating the state government. From a political perspective, by placing this new authority in a troika, each member of which had his own independent political base or constituency, no single executive official would be given too much power. Finally, by delegating to the board, which was already in existence as a constitutional entity, new bureaucracies could be avoided. Government could be kept small.

And so it was that, by latching onto the catchall constitutional authority to "hear and determine such matters as affect the Public Works of the State, and as the General

1. The attorney general recognized this in 1916. Noting the catchall clause, he observed, "Acting under this authority, the Legislature has from time to time imposed upon the board various duties of importance, such as the construction and renting of state buildings, the leasing of state offices, the awarding of state contracts, the insuring of state property, the floating of state bond issues, the supervision over the State Fishery Force and its vessels, and the like." See 1 *Op. Att'y Gen.* 142, 150 (1916).

Assembly may confer upon them the power to decide," and giving a broader meaning to what constitutes the "Public Works of the State," the legislature gradually expanded the jurisdiction of the board into dozens of areas wholly foreign to its original purpose—public contracting, economic regulation, public finance, and, as we shall soon see, the state personnel system and distribution of the state largesse. Some attention was given to the board in the context of the debate in 1921-22 over executive reorganization, but it was not until the mid–1950s that anyone took a serious look at what had occurred. Once having taken that look, it was decided that what had occurred—the radical transformation of the board—was a good thing, and all that was done as a result was to clear the tracks for more of the same.

The last sixty years have been the period of most rapid expansion for the board. That expansion has closely paralleled—indeed followed—the expansion in state government itself. For convenience, it is well to divide this modern era into parts. The first decade—the 1920s—was, perhaps more than any other period, a watershed for the board, a time when it teetered on oblivion but was rescued by Gov. Albert C. Ritchie and given substantial new responsibilities of an ongoing, institutional nature. The 1930s, of course, saw the Great Depression—a forge from which the board emerged as the most powerful agency of state government.

The last forty years saw a more structured expansion of the board's role—not so much in reaction to traumatic external stimuli such as war or depression as the product of deliberate reorganization of a rapidly expanding state government apparatus. This recent expansion, however, has been the most dramatic, both in quantity and in quality; and, again for purposes of organizational clarity, it seems appropriate to split off the final two decades (1960-83) for consideration in a separate chapter.

The rocking back and forth of the board's fortunes actually commenced in 1915. In that year, due to the lack of a rational budget system and the haphazard way in which state funds were appropriated, the state once again found itself facing insolvency. The legislature had appropriated some $2 million more than the state had in revenue, and fiscal disaster was averted only by an emergency treasury relief loan. The budget, such as it was, was balanced with borrowed funds.

At its next state convention the Democratic party, in righteous indignation, adopted a platform pledging an executive budget system for the state. "The basis of the system," said the platform, "shall be a report made either by the Governor or by the Board of Public Works to the Legislature of the estimated income of the State during the succeeding two years, together with recommendations as to the appropriations or expenditures to be made for all purposes during the same period of time." The recommended appropriations included in that report could be reduced by the General Assembly, but not increased. The party platform also pledged creation of a commission "charged with the duty of devising and recommending a detailed plan for the budget system."[2]

Such a commission was appointed by the convention. It was thus a political committee. It was chaired by Dr. Frank J. Goodnow, then president of Johns Hopkins University, and it has since become generally known as the Goodnow Commission.

The Democratic party platform, as noted, suggested either the governor *or the board* as the primal authority in putting together the state budget, and the commission considered both alternatives. Ultimately it opted for placing that responsibility in the

2. "Report of the Commission on Economy and Efficiency on a Budget System" (Goodnow Commission), *S. Jour.* (1916), p. 129.

governor alone, in large part, it would seem, for political reasons. Its reasoning was expressed as follows:

> We have felt that to make use of the Board of Public Works as a Budget Commission would have the disadvantage of dissipating personal responsibility for financial propositions, and would also run the risk of not securing party responsibility. For it is by no means certain under the conditions which exist in the state that the political party to which the Governor belonged would be in control also of the Board of Public Works. If such lack of political harmony should exist, the Commission believe that a budget system based upon the Board of Public Works would lose much in effectiveness.[3]

A draft of a proposed constitutional amendment to implement the commission's recommendations for an executive budget system accompanied the report. It was adopted without significant change by the General Assembly and ratified by the electorate.[4] The board thus came close to achieving a most substantial measure of fiscal control over all of state government; had the alternative mentioned in the party platform been accepted, the board would have enjoyed the awesome budgetary powers vested in the governor.

About this time a number of states began to restructure their administrative apparatus in order to meet more effectively the increasing demands made upon them, and a trend of sorts developed in that regard. Illinois, Ohio, Massachusetts, Washington, Nebraska, and several other states adopted reorganization schemes of one kind or another. The need was clear in Maryland as well, and so, shortly after his election in 1920, Governor Ritchie employed the Chicago engineering firm of Griffenhagen and Associates to undertake a survey of the state administrative structure and make appropriate recommendations for improvements. Why Ritchie chose an out–of–state consultant is not entirely clear; it was a decision he came to regret.

The consultant went about looking into all the various state agencies, including the governor's office. On 10 March 1921, in response to Ritchie's request (relayed through his secretary of state, Philip Perlman), Griffenhagen sent the governor an advance draft of that part of the report dealing with the executive office—primarily the governor's office, the secretary of state, and the Board of Public Works.[5]

The report dealt in great detail with the most routine matters—filing systems, office procedures, correspondence, and the like. But intermixed with this were some comments and suggestions to which Governor Ritchie took great exception. Some of these involved the Board of Public Works, which the consultant said should be abolished. The report stated that "the routine work of the Board of Public Works is a minor item in the work of the force [i.e., the executive office—the governor and the secretary of state] as a whole. The secretary of state as secretary of the board is at present handling its correspondence and other routine matters."[6]

Upon that premise the consultant suggested that the board be abolished by constitutional amendment, that its "functions with regard to public works, rent, leases, and insurance" be turned over to a new Department of Public Works, and that its "financial functions" be transferred to a proposed treasury council. This council was to consist of five persons—the governor, who would have two votes, the comptroller, who would be elected by the legislature, the director of finance (a gubernatorial appointee), and the chairmen of the House and Senate appropriations committees. The idea was an equal division of power between the executive and legislative branches, each having three votes.[7]

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3. *Ibid.*, p. 131.
4. Ibid., pp. 135-39; Acts of 1916, ch. 159.
5. Griffenhagen and Associates, "Advance Draft of Memorandum in re Organization of the Executive Department," 9 March 1921, Governor (Subject File), MdHR 8070.
6. Ibid., p. 1.
7. Ibid., p. 15; Griffenhagen and Associates, "Report on the Organization and Administration of the State Government," 15 April 1921, pt. 1, p. 20, Governor (Subject File), MdHR 8070 (hereafter Griffenhagen Report).

It took the governor but five days to prepare a reply to the advance report, and it was not a pleasant one. The report was "so remarkable," he said, "as to give me great concern"; nothing but "very plain speaking" was justified in response. About the only recommendations suitable to the governor were those pertaining to his filing system; virtually everything else he found deficient. With respect to the comments and suggestions concerning the Board of Public Works, he said:

> No mention at all is made of what is perhaps the board's most important work, the issue of millions of dollars of State bonds, and the application of the proceeds.[8] . . .
> The survey states that the routine work of the Board of Public Works is a minor item in the work of the force as a whole, which is, of course, far from the truth. . . . I refer to these matters simply because they indicate quite clearly to me that the writer of the survey really knows very little about the work of the Executive offices.[9]

In light of the many errors in the report dealing with the executive office, Ritchie questioned whether the survey with respect to other agencies ought to continue. He warned the consultant that if future reports concerning other agencies were no better, he would publicly attack them.[10]

Undaunted by the gubernatorial criticism, Griffenhagen rendered the full and final report on 15 April 1921, making no change in its recommendation that the board be abolished and its functions divided between a department of public works and the hybrid treasury council.[11]

The governor's response to this final report, which he had commissioned, was to consign it to oblivion by creating a commission to study it. The commission—entitled the Reorganization Commission of Maryland—was the epitome of a "blue ribbon" panel. Created in June 1921, it consisted of more than one hundred persons from every part of the state, including a liberal sprinkling of legislators, former congressmen, judges, and political, business, and community leaders. It was chaired by N. Charles Burke, formerly a judge of the Court of Appeals. In his letters of appointment the governor noted that the Griffenhagen recommendations followed the plans adopted in a number of other states, but he added pointedly, "The problems involved differ in the different States, and I would not be willing to recommend to the Maryland Legislature any reorganization plan which had not first received the approval of a commission of representative Maryland men."[12]

Considering the size of the commission, it worked with remarkable speed, rendering its report in September 1921—three months after its creation. It expressly rejected the Griffenhagen plan (as expected), which, it found, "did not take sufficient account of the experience, conditions and usages of this State." "This was not at all unnatural," said the commission, "and would almost inevitably be the case with any plan drafted by outside experts."[13]

In terms of the Board of Public Works, the commission observed:

> The Board of Public Works is one of the recognized institutions of the State, its members are the three most important executive and financial officers of the State, they can quickly assemble at all times and whenever needed, and the board fills an important place in the

8. Gov. Albert C. Ritchie to Griffenhagen and Associates, 15 March 1921, pp. 1, 2, Governor (Subject File), MdHR 8070. Between 1910 and 1920 state bonded indebtedness nearly quadrupled—from $7.5 million to $28.1 million—and the board, of course, was responsible for selling the bonds and, except for highway projects, superintending the expenditure of the proceeds. The dramatic increase in state debt, both in relative terms and in actual dollar volume, made this aspect of the board's function increasingly important, and that, no doubt, is what prompted Ritchie's comment.
9. Ibid., p. 2.
10. Ibid., p. 6.
11. Griffenhagen Report, pt. 2.
12. Governor Ritchie to Commission Appointees, 31 May 1921, Governor (Subject File), MdHR 8055-12, folder 88.
13. Reorganization Commission of Maryland, *Plan for the Reorganization of the Administrative Departments of the State Government of Maryland* (Annapolis, 14 September 1921), p. 16, MdHR 805995 (hereafter *Reorganization Commission Report*).

> administration of State affairs. We accordingly recommend that no change be made in the organizations or functions of the Board of Public Works, except that we think the State Auditor, the Bank Commissioner and the Insurance Commissioner should . . . be appointed by the Governor instead of by the board.[14]

The governor, who had maintained close contact with the Reorganization Commission, accepted its recommendations and caused a bill to implement them to be introduced into the 1922 session of the legislature. The bill, with some amendments, was enacted, marking the first modern reorganization of the executive branch of the state government. Rather than doing away with the board as recommended by Griffenhagen, the act not only retained it but actually increased its responsibilities in a number of significant ways. Through the act, the General Assembly reorganized the executive branch into nineteen units, one of which was the Finance Department. The Finance Department, in turn, was divided into three divisions. The Board of Public Works, as an entity, was to "constitute the third Division of the Finance Department, and shall have and exercise the rights, powers, duties, obligations and functions now or hereafter conferred by law."[15]

Although the placement of the board—a constitutional body—as a subsidiary unit of a statutory agency is of some interest from a purely management or organizational perspective,[16] that placement, per se, was not particularly significant from a functional point of view. Much more important were the duties imposed on the board by part 16 of the act creating the Department of State Employment and Registration, which encompassed the various licensing boards and commissions. The legislature gave the board virtually total budgetary and management control over every one of these constituent boards and commissions.

Section 3 of part 16 of the act required each of these agencies annually to submit to the board an itemized estimate of its expected income and expenses for the ensuing year. It then provided that the board should "approve all or such portion of said estimated expenses and disbursements as it deems proper, and each of said boards and agencies shall make no expenditures except for purposes so approved by the Board of Public Works, which shall in each case determine the time for such annual estimates to be submitted." Section 4 required the agencies to account to the board for their expenditures. At the time there was no separate budget agency, as there is today; the board performed that critical function for these agencies.

Section 4 of part 16 authorized the board to determine where the regulatory agencies were to be physically located. They were, as noted, to be part of the Department of State Employment and Registration, which combined the functions now performed by the Department of Personnel and the Department of Licensing and Regulation and was headed by the state employment commissioner. Section 5 permitted the board to determine whether the agencies should operate from the commissioner's office or from their own separate quarters. If the former, the board was empowered to cancel the leases for their current office space and see to their relocation.

The exercise of these control functions—budget and location—would naturally affect the personnel requirements of the agencies, and that too, was recognized by the legislature. Thus, section 6 of part 16 provided that "the position of any secretary or

14. Ibid., p. 43.
15. Acts of 1922, ch. 29, pt. 2, sec. 5.
16. Also of interest, organizationally, is the fact that the act created a separate Department of Public Works, but the Board of Public Works had little or nothing to do with it. The department was headed by, and seemed to consist entirely of, the State Roads Commission, which the act created. The Finance Department was headed by the comptroller and the treasurer and comprised the Treasury Department created by the constitution. The first division was the Division of Financial Review and Control, which consisted essentially of the state auditor and his deputies, appointed by the governor. The second division was the Division of Deposit and Disbursement, which consisted of the bank commissioner, the Insurance Department, the State Tax Commission, and the Central Purchasing Bureau. It was headed by the treasurer. Following the recommendation of the Reorganization Commission, the act removed the appointment of the bank, insurance, and tax commissioners from the board and placed them with the governor.

other employee of any such board or agency which the Board of Public Works may determine to be unnecessary because of the carrying out of the provisions hereof, shall be and stand abolished."

Although the obligation to review and determine the location requirements of the various agencies was nonrecurring—an obligation that was more or less completed by August 1923—the budgetary and accounting function was annual. And until the system was changed in 1939, the board continued to discharge that responsibility. For the most part, the fees collected by these agencies more or less matched their expenses, and there was little in the way of actual budget cutting done by the board. But the work did require annual review of the budgets, and that took some time.

The next ten years were relatively uneventful for the board. It met regularly and performed routinely its various statutory duties. As late as 1931 it limped along with but minimal staff assistance; its budget in that year for its own operations was \$2,300—for one secretary and a stenographer.[17]

The 1930s were, of course, the years of the Great Depression. The economic catastrophe that broke upon the nation in 1931-32 and the social upheavals attendant to it hit the state with a double-barreled blow. At the same time that it was asked to step into the breach and expand human needs programs its revenues were shrinking dramatically. All that spelled an end to the routineness of the board's work and spawned, instead, a spate of new duties for it to handle.

The fountainhead of this new round of delegated authority to the board was the 1933 budget bill, which included a number of new provisions designed to meet the economic crisis and in particular the dramatic reduction in state revenues resulting from it.[18] A number of these provisions have remained in the law in one form or another ever since and have thus shifted from emergency measures, as was their original intent, to a settled part of state governmental apparatus and procedure.

Section 10 of the budget bill of 1933, which has since been codified, authorized the board to borrow up to \$50,000 to meet temporary deficits in the treasury and up to \$1 million in anticipation of taxes. This authority was apparently not actually needed or utilized until 1935, when, for the first time since 1915, the state teetered on the brink of temporary insolvency. In February of that year the board was faced with the immediate prospect of being unable to meet a \$3.5 million debt service payment due 15 February. On 11 February the board authorized the treasurer to borrow \$1 million in anticipation of calendar year 1935 taxes and add the proceeds to the annuity bond fund in order to meet the debt service obligation. The constitutionality of this practice—of the legislative authorization—had never been tested, and the board was forced by the circumstances to rely upon an opinion of Attorney General Herbert R. O'Conor rendered two days before the meeting. O'Conor concluded that a borrowing in anticipation of taxes "does not create a debt within the meaning of Constitutional or statutory provisions, requiring that provision for payment must be made contemporaneously with the incurring of a debt."[19]

17. Acts of 1931, ch. 150, sec. 10.
18. Acts of 1933, ch. 597.
19. See 20 *Op. Att'y Gen.* 257, 259 (1935). The problem, of course, was article 3, section 34 of the Maryland Constitution, which, among other things, prohibited the General Assembly from contracting a debt "unless such debt shall be authorized by a Law, providing for the collection of an annual tax, or taxes, sufficient to pay the interest on such debt, as it falls due; and also, to discharge the principal thereof, within fifteen years from the time of contracting the same." By Acts of 1982, ch. 601, the legislature greatly expanded the statutory authority, permitting the treasurer, at the direction of the board, to borrow up to \$100 million in anticipation of (1) tax receipts shown in the revenue estimates as supporting an enacted budget or (2) receipts from a completed sale of bonds. To date this statutory authorization has not been considered by an appellate court of the state.

A second major—indeed remarkable—innovation inaugurated in the 1933 budget and repeated in succeeding budgets was a pervasive impoundment authority vested in the board. Section 11 of the 1933 bill empowered the board "to supervise the expenditure of all appropriations contained in this budget and for that purpose the said Board shall have power to reduce or eliminate any appropriation which it may deem unnecessary [except appropriations for debt service or for the Legislature or the Judiciary]." To that end the section also provided that "no officer, department, commission or employee shall be authorized to expend any appropriation which the Board of Public Works deems to be unnecessary." The board was authorized to establish rules and regulations to carry out these powers.

The extent to which the board actually utilized this extreme authority is not entirely clear; for the most part, the various agencies needed *more* money rather than less in order to meet the new demands fostered by the economic calamity.[20] In May 1934 the board directed the state purchasing agent, Walter Kirkman, to prepare tentative forms in connection with any plans the board might undertake to carry out the budget control provided in the budget bill. In August and September 1935 there are references in the board minutes to its adoption of budget schedules for each department and its approval of the budgets "for the various State Departments, Agencies and Institutions" prepared for the board by the state budget director, William H. Blakeman.[21]

On 5 November 1935 the board finally got around to exercising its rule-making authority, as it was repeated in the 1935 budget bill. At its meeting that day the board adopted six rules, the third of which provided that "no appropriation shall be expended for any purpose other than that provided in the Budget Act of 1936-37 without the approval of the board, in addition to approval of the Governor, as required by the Budget Act."[22]

The rule was a bit broader than the statutory authorization, and the attorney general, recognizing that, declared the rule invalid. He did, however, at least tacitly sustain the validity of the underlying statutory delegation, concluding:

> The Board of Public Works has no authority to require that any amended schedule shall be approved by it as well as by the Governor before it becomes effective. Its power is only to reduce or eliminate any payment called for by such amended schedule which it deems to be unnecessary. The board's power, therefore, is in the nature of a veto power with respect to particular expenditure rather than an initiative power with respect to the apportionment of appropriations. Inasmuch as the Board of Public Works has the power to disapprove of any part of an appropriation which it deems unnecessary, it would not appear necessary to adopt rule number 3.[23]

This postlegislative impoundment authority remained in the law, as part of the annual budget bills, until 1939, when a modified form of it was given to the governor. Even today the governor can only exercise that authority—to impound up to 25 percent of an appropriation—with the approval of the board.[24]

20. This authority was in addition to the even more comprehensive control delegated to the governor. In the 1931 budget (Acts of 1931, ch. 150), the General Assembly had stated that the items enumerated in the bill constituted only an "initial plan of disbursement" and that the governor could, if he chose, amend that schedule with respect to executive agencies. Sec. 7 of the 1933 budget retained the concept of "initial plan of disbursement," but in contrast to its predecessors it *required* all executive agencies to submit to the governor an amended itemized schedule and permitted disbursement only to the extent the governor approved the amended schedule. This, in effect, made the budget bill a mere starting point and gave the governor total control over the state budget, both before (*Maryland Constitution* [1867], art. 3, sec. 52) *and* after its enactment.

21. BPW Minutes, 16 May 1934, vol. 3 (1930-35), p. 338; 22 August, 18 September 1935, vol. 4 (1935-37), pp. 108, 120.

22. Acts of 1935, ch. 92, sec. 11; BPW Minutes, 5 November 1935, 4:186.

23. 21 *Op. Att'y Gen.* 172, 175 (1936).

24. Acts of 1939, ch. 64, created a whole new system of budgetary administration. See also *The Annotated Code of the Public General Laws of Maryland,* art. 15A, sec. 11 (hereafter *Md. Ann. Code*).

A third innovation made in the 1933 budget bill in response to the deepening depression was the creation, in section 11, of two large emergency funds to be controlled by the Board of Public Works. For each of the two years provided for in the act (fiscal years 1934 and 1935), the legislature appropriated a reserve fund of $400,000 and an emergency contingent reserve fund of $250,000. The appropriations were to the board, and it was authorized to allocate the funds among the various state agencies, schools, and institutions. The only criterion for this allocation was that the board be convinced "beyond all reasonable doubt" that the disbursement was necessary to enable the agency "to perform the most essential functions" for which it was created.

Most of the detail work with respect to these allocations was delegated to Kirkman, the state purchasing agent who served as the principal staff to the board, but the review and resolution of the agency requests became a major part of the board's agenda. The board itself was very conservative in handling these funds, especially in the beginning. For fiscal year 1934, for example, the board allocated only $444,000 of the $650,000 available to it, reverting $206,000 to the treasury. Regularly throughout the year it rejected appeals from state agencies and institutions for additional allocations, and rejected as well their requests to carry over into fiscal year 1935 unexpended fiscal year 1934 appropriations. For fiscal year 1935 it was somewhat more liberal; in the first three months of that year it allocated almost $550,000 of the $650,000.[25]

With some hiatus, this responsibility of supervising a lump appropriation to an emergency fund has continued with the board ever since 1934. The 1935 budget bill created a fund of $500,000 for fiscal years 1936 and 1937, although none seems to have been created for the two years thereafter.[26]

Finally, as perhaps the most drastic measure included in the 1933 budget bill, by section 12 the General Assembly cut the salaries of nearly all state employees by 10-15 percent, depending on the amount of the salary. If the annual salary was less than $1,200, the cut was to be "not less than 10 per cent"; if more than $3,600, it was to be "not less than 15 per cent." The Board of Public Works was not immediately and directly involved in implementing these cuts, that thankless task falling to Governor Ritchie, but it did become involved in implementing their restoration.

In the 1935 budget bill the General Assembly made some additional salary reductions, but with respect to the reductions made in both the 1933 and 1935 bills it empowered the board "at any time, when it appears that the revenues of the State are sufficient over and above the amount required to pay the specific appropriations as provided in this Act, to restore such salary reductions, or any part thereof, as in its judgment may be deemed necessary and expedient." To fund any such restorations, the General Assembly appropriated $500,000 "out of any excess in the State Treasury" during the ensuing two fiscal years. Similar authority was given to the board by a separate measure to restore up to one–half of the cuts that had been made in teachers' salaries.[27]

The first beneficiaries of this authority appear to have been the employees in the Court of Appeals clerk's office. In September 1935 the board allocated $512 to restore the 1936 salaries of four employees. Later it voted to restore one–quarter of the cuts made in the teachers' salaries and agreed to restore the salaries of the clerks of court.[28] Most of the restorations were apparently approved through the normal budgetary process and are not specifically reflected in the board's minutes. The board ran into one problem, however, when it authorized restoration of salaries paid to some of the department heads and other high executive officials. The attorney general declared those individuals to be "officers" in the constitutional sense and viewed the restoration

25. BPW Minutes, 18 March 1935, 13 November 1934, 3:493-94, 434.
26. See Acts of 1935, ch. 92; 1937, ch. 515.
27. Acts of 1935, ch. 92, sec. 12; ch. 447, sec. 6.
28. BPW Minutes, 24 September, 5 November, 4 December 1935, 4:121, 190, 210-11.

as an inappropriate increase in salary during their term of office. As a result, the restoration of those salaries was rescinded.[29]

The net effect of all these salary cuts and restorations was shown in a report made to the board in September 1936. For fiscal years 1934 and 1935, total salaries were cut by 16.5 percent—over $1 million. Additional cuts made by the legislature in the fiscal years 1935 and 1936 budget amounted to 6.3 percent, or $335,000. By September 1936, however, all of the 1935-36 legislative reductions had been restored, as well as about 40 percent of the cuts made in 1933.[30]

The impact of these various emergency measures inaugurated in 1933 extended beyond the specific duties they imposed on the board. There was a significant cumulative effect as well, for what they did, in the aggregate, was to give the board broad general power over both the state budgetary and personnel systems.

Notwithstanding the attorney general's opinion as to the validity of proposed rule 3, by virtue of its broad legislative grant the board continued to exercise a significant control function over agency spending. Proposed budgets continued to be submitted to the board, and they were not always approved.[31] Moreover, given the extremely tight budgets actually enacted by the General Assembly, the ability of many state agencies to carry out their programs became heavily dependent upon discretionary allocations from the emergency funds appropriated to the board. And through its control of those emergency funds, the board gained the power to influence spending, and thus program, priorities.

The Board of Public Works' authority over state personnel was not, initially, as dramatic. But it, too, grew. Several of the rules first adopted by the board in November 1935, pursuant to the authority conferred by the 1933 and 1935 budget bills, dealt with personnel. Rule 1, for example, required board approval for any increase in the salary of a state employee. Rule 4 forbade agencies from creating positions in excess of the number authorized in the budget bills.[32] Coupled with the ill–fated rule 3, this was no doubt intended to preclude agencies from shifting funds from nonsalary accounts in order to create new jobs.

That preclusive authority was expressly conferred on the board by the 1937 legislature. As part of the 1937 budget bill, the General Assembly provided that no part of an appropriation for salaries could be used for any other purpose and no part of an appropriation for any item of operating expense other than salaries could be used for the payment of salaries "without the previous approval of the Board of Public Works." The same act also required board approval for the creation of new personnel classifications or the abolition of existing ones, as well as for the switching of salary appropriations from one classification to another.[33]

Rules 5 and 6, adopted in November 1935, set some basic conditions on reimbursement of employees for travel and automobile expenses. For the most part these rules simply required documentation and reporting. In June 1937, however, the board established a flat rate for such automobile expense reimbursement at 5 cents per mile. In August 1939 it set a vacation policy for part–time state employees.[34]

Most of this expanded authority was part of the direct response by the state to the effects of the depression. The national government, of course, was not idle either. As the various New Deal relief measures came into being, the board found a few new duties imposed upon it from that quarter as well. Three aspects bear particular mention, although one of them was short lived.

29. 20 *Op. Att'y Gen.* 599, 604 (1935); BPW Minutes, 5 November 1935, 4:187.
30. BPW Minutes, 9 September 1936, 4:414. Additional sums were appropriated for this purpose in fiscal years 1938 and 1939. See the 1937 budget bill—Acts of 1937, ch. 515.
31. See, for example, BPW Minutes, 4, 18 June 1936, 4:349-50.
32. Ibid., 5 November 1935, p. 186; Acts of 1933, ch. 597, sec. 11; 1935, ch. 92, sec. 11.
33. Acts of 1937, ch. 515, sec. 5.
34. BPW Minutes, 5 November 1935, 4:186; 23 June 1937, 2 August 1939, vol. 5 (1937-41), pp. 34, 287.

One of the major pillars of New Deal fiscal policy was an extensive public works program, part of which involved matching grants to assist in the construction of state and local facilities. The General Assembly, anxious for the federal assistance, began to condition its own capital appropriations on attempts to secure such grants, and through its general control over capital construction the board was called upon to consider and approve these applications and to accept the grants made pursuant to them.[35] Some of this process was routine and does not seem to have been a particular burden to the board, although it was a new area of responsibility.

One phase of the board's new role was not routine, however, and on at least one occasion it created some controversy. With the enactment of the federal Davis–Bacon Act (requiring contractors on federal public works projects to pay prevailing wage rates) and the regulations adopted pursuant to it, the board was called upon to "predetermine minimum wage rates for each trade and occupation to be engaged in work on the project . . . in accordance with rates prevailing for work of a similar nature in the locality of the project." The board's first attempt at setting wage rates, in November 1937, apparently went smoothly. Upon the advice of the architects it selected, the board predetermined prevailing wage rates for a few dozen trades in connection with projects for five state hospitals and two colleges. If there was any controversy about the rates established, it is not reflected in the minutes.[36]

A problem arose several months later, however, in connection with two projects for the University of Maryland—one in Baltimore and one in College Park. The construction industry wage rates in the Washington area were apparently lower than those in Baltimore. As a result, the board had previously established one set of rates for the state hospital projects located around Baltimore and a lower set for work at Bowie State College, nearer to Washington. The architects on the University of Maryland projects recommended use of the Baltimore area rates for both projects. A delegation of contractors "representing Open Shop Builders" appeared before the board to protest that recommendation, asking instead that the rates established for the Bowie project be applied to the work at College Park. This, in turn, was opposed by a union representative, who spoke in support of the architects' proposal. The board split—the governor favoring the architects' and union approach, the comptroller and treasurer siding with the nonunion contractors.[37]

A third area of responsibility prompted by federal impetus came with the enactment of the State Unemployment Compensation Law in a special session of the legislature held in December 1936. The act created a system of unemployment compensation benefits and established criteria for eligibility, a procedure for filing and adjudicating claims, and a method of funding the program through employer contributions to an unemployment compensation fund. The administration of the act, according to section 10, was "placed under the direction and supervision of the Board of Public Works." The board was given complete responsibility for running the program; it was to appoint all the major administrative personnel—examiners, an appeal tribunal, an executive director and his associates—as well as to fix witness fees and to adopt rules and regulations pertaining to nearly every aspect of the program.[38]

The board retained this authority for only a few months, during the formative period, and that may have been the initial legislative intent. At the next session (1937), the General Assembly created a separate Unemployment Compensation Board and transferred the administrative responsibilities to it. But meanwhile the Board of Public Works got the program started, and on at least two occasions during the spring

35. See, for example, ibid., 14 July, 23 September 1937, 5:39-43, 71. See also 22 *Op. Att'y Gen.* 160 (1937), confirming the board's authority to supervise the expenditure of the federal and state funds.
36. U.S. Code, Title 40, sec. 276a *et seq.*; BPW Minutes, 16 November 1937, 5:110-12.
37. BPW Minutes, 27 July 1938, 5:199.
38. Acts of 1936 (Spec. Sess.), ch. 1.

and summer of 1937 it examined detailed reports showing receipts to and disbursements from the fund, the numbers of persons employed, salaries paid, and other relevant matters.[39]

While all of this was happening the board had, of course, to discharge the other duties it had accumulated over the years as well. The minutes continue to reflect consideration of bond sales, construction projects, other public contracts, occasional efforts to dispose of the Northern Central Annuity, the purchase, lease, and disposition of state property (including permission for various agencies to charge off uncollectible accounts receivable),[40] and the placement of insurance on state property.

The board's authority over the placement of insurance was, at best, tenuous. At some point during the early 1920s it had concluded that that function should be centralized in one office and designated the treasurer to handle it, although no formal resolution to that effect appears anywhere. The only reference to such a decision occurs in a letter from Governor Ritchie to the attorney general. When in 1923 the Board of Managers of the Maryland Training School for Boys raised a question about the authority of the Board of Public Works in the matter, the attorney general gingerly opined that the board's delegation of insurance placement to the treasurer (necessitating a transfer of funds appropriated for insurance from the agency to the treasurer) had no binding effect, but was instead "in the nature of a request" that the agencies cooperate.[41]

The records seem to indicate only partial compliance. As late as 1939 some insurance on state vehicles was still being placed by the agencies to which the vehicles were assigned. The treasurer apparently placed the basic fire and theft insurance under a fleet policy, but some of the agencies purchased, separately, policies of liability insurance. In May 1939 the board directed the treasurer to look into consolidating liability insurance under one fleet policy.[42]

One agency that proved recalcitrant was the State Roads Commission. In April 1936 the treasurer complained that the commission refused to turn over information relating to insurance on property—mostly bridges—under its jurisdiction and that the dispute had been noticed and commented on by the press. The board agreed that the treasurer should handle the insurance, and the governor wrote to the commission insisting that the treasurer's authority in the matter be recognized. Still the commission demurred, and the controversy dragged on for more than a year. Finally, in an unpublished opinion the attorney general told the commission that since the property in question was state property, the board had ultimate authority over it and could direct the placement of insurance.[43]

One final new duty—a rather unusual one—came to the Board of Public Works in 1935. The General Assembly enacted a law requiring the chief financial officer of every county, municipality, special district, or other political subdivision permitted to incur any debt redeemable from the proceeds of any general or special tax to file with the board, at least annually, a comprehensive statement of its financial condition. The statement had to show the subdivision's assessable property, bonded indebtedness, sinking funds, tax levies, population, and any other financial information desired by the board. The law also required that the board examine those statements, which its minutes reveal it occasionally did.[44]

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39. Acts of 1937, ch. 314; BPW Minutes, 7 April, 23 June 1937, 5:1-9, 16-17.
40. See 45 *Op. Att'y Gen.* 107 (1960), where the attorney general concluded that the charge-off of bad debts was a disposition of state property requiring board approval. Compare 45 *Op. Att'y Gen.* 232 (1960), adopting a different rule for the University of Maryland.
41. See 8 *Op. Att'y Gen.* 179, 180 (1923).
42. BPW Minutes, 15 May 1939, 5:251.
43. Ibid., 1 July, 18 September 1935, 1 April 1936, 4:61-62, 117-20, 279-80, 294. The first clear statutory authority of the treasurer to handle insurance on state property came in 1973. See Acts of 1973, ch. 403.
44. Acts of 1935, ch. 355. See, for example, BPW Minutes, 1 July 1935, 4:72.

As is evident from the foregoing discussion, the board, over the years, was being inundated by the legislature with piecemeal additions to its duties. Its meetings grew longer, its agenda more varied and complex, as it delved ever deeper into the inner workings of state government. Although most of its new authority was statutory, not all of it was codified. As noted, a good bit of the board's responsibility emanated from language included in the biennial budget bills.

Despite this broad expansion of jurisdiction, the board continued to limp along with a minimal staff. Indeed, the state budget for fiscal years 1938 and 1939 shows only one employee—a stenographer.[45] The board did have a secretary (although any appropriation for his compensation was buried elsewhere in the budget), but mostly it relied on the state purchasing agent and the budget director, a new position in the governor's office, to assist it with the detail work.

In 1939 the General Assembly attempted to centralize and formalize some of these "control" functions in a single new executive agency. In the first statutory implementation of the 1916 "budget amendment" to the Constitution, it created a Department of Budget and Procurement and vested in it much of the day-to-day responsibility for budget preparation and control and for purchasing. In the same act the legislature restated some of the board's general authority over state debt, property, finance, and general operations, permanently codifying in the process a number of provisions formerly enacted periodically as part of the budget bills. Some of the new statutory material was included in new sections added to article 78A of the code (Public Works); some of it was placed in the new article 15A (Budget and Procurement) created by the act.[46]

The new sections added to article 78A confirmed the board's authority with respect to the sale of state debt, including the broad power to approve "all contracts for expenditure of the proceeds of any loan authorized by the General Assembly . . . before the same are executed" (section 1), the power to borrow money in anticipation of taxes or to meet temporary deficits (section 4), and the power to approve all state leases (section 3), including the somewhat expanded authority to "designate the location of any State agency."[47] Section 1 empowered the board to supervise the expenditure of all sums appropriated for the acquisition or construction of state property, except state roads, bridges, and highways. New section 5 of article 78A was a broad catchall. Upon the recommendation of the comptroller, the board was authorized to adopt rules and regulations "covering matters of business administration in the various departments, institutions and agencies of the State," which would be binding upon the affected agencies. Read literally, that one statute gave the board a most pervasive superintending role over state operations and programs.

As noted, much of the board's authority relating to budget administration was included in the new article 15A. Section 9 of that article, for example, though taking away the direct power of the board to impound agency funds and placing that authority in the governor, still required board approval of any such impoundment. Section 10 retained board prerogatives over lump-sum appropriations; it required the recipient agency to submit a detailed budget schedule to the board and precluded the agency from spending the appropriation until the board approved that budget.

As the dismal decade of the 1930s ended, the board emerged as the most powerful unit of state government, excepting only the legislature and possibly the governor. Very few matters of real significance were, by then, outside its purview. For the most

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45. Acts of 1937, ch. 515.
46. Acts of 1939, ch. 64. The "budget amendment" was Acts of 1916, ch. 159.
47. The 1922 Reorganization Act (Acts of 1922, ch. 29), it will be recalled, granted that authority only with respect to the regulatory boards included within the Department of State Employment and Registration. This new authority was much broader and was held to apply to "all agencies, regardless of whether they enjoy an independent status, or operate under the supervision of a particular department." That included the University of Maryland. 24 *Op. Att'y Gen.* 324 (1939).

part the board seemed to discharge its duties efficiently and without significant controversy. One area in which it did not measure up, at least in hindsight, was its reluctance to come to grips with the state's flagrant discrimination against blacks in higher education.

"Separate but equal" was, of course, the law governing public education in Maryland, but the separate systems were not equal, especially in higher education. Black students were not admitted to the University of Maryland or to the state teachers colleges, and there were no public substitutes for them. Morgan and Princess Anne Colleges were still private schools, although they did receive state appropriations.

By 1935 this scandalous condition could no longer be ignored by the legislature. In that year it created a Commission on Higher Education of Negroes and charged it with conducting a study "of the needs of higher education in Maryland, including Morgan College" and making such recommendations "as may be necessary to provide facilities for the higher education of Negroes in the State of Maryland." At the same time, as a feeble alternative to integration (or even to the development of equal facilities for blacks), the General Assembly established a system of partial scholarships ($200 each) to be offered to qualified black students to assist their attending out–of–state schools. The study commission was authorized to administer the scholarship program.[48]

In a letter dated 1 January 1936 Commissioner Carl Murphy requested from the Board of Public Works an additional $6,000 in order to complete the study in time for the 1937 session of the legislature. The board rejected his request.[49] Two months earlier it had also rejected a plea from Judge Morris Soper, also a commissioner, to work out an acceptable solution to the problem. Judge Soper noted that the state was then a defendant in a suit pending in the Court of Appeals involving the University of Maryland Law School, an action brought by a young black attorney named Thurgood Marshall on behalf of a black student who had been denied admission to the school solely on the ground of his race.[50]

The board was guided by the advice of an assistant attorney general—one William Henderson, later to become associate judge and then chief judge of the Court of Appeals. Notwithstanding that the state had lost its case before the Baltimore City Court, which had ordered it to admit the plaintiff to the Law School, Henderson believed that the state would prevail in the Court of Appeals and ultimately in the Supreme Court. He advised the board to await the anticipated favorable decisions before even embarking on the mandated survey of education for blacks in the state.[51]

The wait was short lived, and the result was not what Henderson expected. On 15 January 1936 the Court of Appeals unanimously affirmed the lower court order and directed the university to admit the plaintiff–applicant.[52] The legislative reaction to this was to expand the scholarship program in order to provide a more equal resource for black students (and thus continue their exclusion from the university) and ultimately to authorize the acquisition of Morgan College as a state college for blacks.

48. Acts of 1935, ch. 577. A total of $6,000—$3,000 for fiscal year 1936 and a like amount for fiscal year 1937—was appropriated in the 1935 budget bill to carry out the study. The legislature also appropriated $10,000 for fiscal year 1936 and a like amount for fiscal year 1937 for the scholarship program. See Acts of 1935, ch. 92. At the rate of $200 each, those amounts would fund fifty scholarships. To be eligible the candidate had to "maintain a satisfactory standard in deportment, scholarship and health after the award is made, and must meet all additional charges beyond the amount of the scholarship to enable him to pursue his studies." Acts of 1935, ch. 577, sec. 2.

49. BPW Minutes, 8 January 1936, 4:229-30. Acts of 1935, ch. 577 directed that the study be completed by 1 January 1935. That date was obviously a typographical error, inasmuch as the law did not take effect until 1 June 1935, and appropriations were made for fiscal years 1936 and 1937. The intention may have been for the report to be completed by 1 January 1938, which would explain Commissioner Murphy's request that the commission be allowed to complete its work by January 1937.

50. BPW Minutes, 5 November 1935, 4:182-83.

51. Ibid.

52. *University v. Murray,* 169 Md. 478 (1936).

The agreement for the acquisition of Morgan was subject to board approval, and, if approved, the board was empowered to appoint the first public board of trustees of the college. An agreement was, of course, negotiated, and in November 1939 the board approved it and appointed the governing board.[53]

It was not long before some friction developed over the new state college. Apparently there was an unexpended surplus of $125,000 left from the sum appropriated for the acquisition of Morgan College, and the new board of trustees wanted to use it to build a dormitory. The trustees made the mistake of selecting an architect to design the new building without conferring with the Board of Public Works, however, and when that fact surfaced, the board was quite upset. It expressed its sentiments at a meeting in January 1940, issuing a stern warning to the college not to select any more architects, but it approved the project then at issue.[54]

The outbreak of war in Europe prompted a quickened pace of rearmament here, and although that helped to hasten the end of the Great Depression, it also created a number of new dislocations. This became more apparent, of course, after Pearl Harbor, but it was evident before.

One major effect of the outbreak of World War II was a sharp decline in civilian construction projects as both men and materiel were diverted to defense efforts. The General Assembly recognized the problem in its spring 1941 session when, in the 1941 general construction loan, it recommended to the Board of Public Works that the expenditures authorized by the bill be "delayed and postponed if the labor conditions are such as to interfere with the defense program or if the commodity prices are such that construction would result in very high costs compared with normal conditions." The board followed that recommendation. It ordered a study of what projects could be eliminated and ultimately decided to defer selling some of the authorized construction bonds. In 1943 the legislature reappropriated the funds for other, more important, projects.[55]

There was, in the beginning, some direct war-related activity for the board, but most of the impact was indirect. In its first two meetings after Pearl Harbor, the board discussed with the adjutant general how the "home guard" could best be used, finally deciding to have it guard the state's water supply (Pretty Boy and Loch Raven dams), but to leave the protection of industrial plants to "special" policemen commissioned by the governor. The board's role in deploying the guard was primarily fiscal. The soldiers had to be paid and covered by workmen's compensation insurance. In what was obviously an overabundance of caution, the board allocated $5,000 to prepare abandoned mines in western Maryland for the temporary storage of the state archives, although it is not clear whether any archives were actually moved. Finally, the board patriotically rejected a suggestion by the state forester that the state acquire title to employees' private automobiles in order to enhance their ability to get tires and other automotive products rationed by the federal government.[56]

The most significant new activity of the board during the war years was extending its control over the state bureaucracy and personnel. In February 1942 the board imposed an across-the-board hiring freeze, declaring that no vacancy in state service was to be filled without board approval. It then delegated the approval power to the director of budget and procurement, Walter Kirkman, with the understanding that

53. Acts of 1937, ch. 506; 1939, ch. 331; BPW Minutes, 9, 20 November 1939, 5:320-21, 327.
54. BPW Minutes, 23 January 1940, 5:358.
55. Acts of 1941, ch. 854; BPW Minutes, 12 December 1941, 16 January 1942, vol. 6 (1941-46), pp. 74, 80-81; Acts of 1943, ch. 668.
56. BPW Minutes, 12 December 1941, 16 January 1942, 6:74, 80-81, 84.

he would consult with the board. A month earlier, perhaps stung by a request to reimburse the chairman of the State Tax Commission for expenses incurred in attending a convention of the International Bar Association in Havana, the board put a stop to such travel at state expense. The board subsequently clarified its position, indicating that the ban was on "annual conventions," not meetings where matters of interest to the state would be discussed. This policy was reaffirmed a year later, in April 1943, and was rigidly enforced. With great regularity the board rejected individual travel requests.[57]

Another area of board intrusion into state personnel matters—this one specifically delegated by the legislature—involved "extended" sick leave. State law allowed thirty days sick leave per year, and up to one hundred days could be accumulated. From time to time a serious illness or disability would strike, causing a long-term employee to use up all his accumulated leave. To deal with such hardship cases, the legislature in 1943 authorized the board to grant an additional sick leave extension for up to one year if the employee had been in continuous state service for ten years or more. A number of these cases arose—more than might be expected—and the board spent parts of several meetings considering the merits of individual petitions.[58]

One of the annual routine functions currently performed by the board is to set the state real property tax rate. This was not always the case, however; the history of that power dates from 1941.

Although the state property tax rate had remained fairly steady for about fifteen years, fluctuating from 27 cents per $100 in 1925 to just over 23 cents in 1940, the General Assembly in 1941 declared that real estate "now bears a heavy and disproportionate share of the tax burden in this State" and determined that the state should "help to alleviate this condition by reducing the State real estate tax whenever possible." The state property tax was used primarily to support debt service on state bonds, but with the prospect of increasing revenues from other taxes due to enhanced economic activity, the legislature saw a way to reduce the real estate tax by allowing the debt service to rest in part on other revenues. It therefore provided that if the revenues derived from the income and other taxes for fiscal years 1941 and 1942, together with any surplus carried over, exceeded appropriations for those years by more than $2 million, the Board of Public Works could dedicate the excess over $2 million to debt service and correspondingly reduce the real estate tax by that amount.[59]

Article 3, section 34 of the Constitution requires the General Assembly, in creating any state debt, to provide in the law creating the debt "for the collection of an annual tax, or taxes, sufficient to pay the interest on such debt, as it falls due; and also, to discharge the principal thereof, within fifteen years from the time of contracting the same." The General Assembly normally complied with that requirement by actually imposing a specific property tax in each bond bill sufficient to meet the debt service on that particular issue and requiring the subdivisions to levy and collect the tax at the rate so specified.[60] The actual state property tax levied each year would normally be the aggregate of these individual impositions. This practice of specifying a rate in each bond bill continued through at least 1949, although on occasion the legislature itself accumulated the various impositions and set the aggregate property tax rate by statute.[61]

57. Ibid., 10 February, 16 January 1942, 22 April 1943, 30 June, 31 August 1944, 6:105, 79, 193, 311, 328.
58. *Acts* of 1943, chs. 782, 987; *BPW Minutes*, 30 June, 7 September, 2 December 1943, 30 June 1944, 6 March 1945, 6:216-17, 246, 270-71, 321, 373.
59. Acts of 1941, ch. 528.
60. See, for example, Acts of 1939, ch. 756 (1939-40 general construction loan); 1941, ch. 854 (general construction loan).
61. See, for example, Acts of 1945, ch. 996; 1949, ch. 278. Acts of 1945, ch. 748, aggregated the rates set under thirteen separate bond bills and established a single tax rate for 1946 and 1947 of 11 cents per $100. See also Acts of 1949, ch. 431.

Beginning in 1951, however, the General Assembly backed away from this approach and left it to the board to determine how much revenue was needed to meet debt service obligations. Uniformly thereafter, in each bond bill the legislature directed the subdivisions to levy and collect a state property tax at the rate certified by the Board of Public Works and empowered the board, in turn, to compute the rate required to produce the necessary revenue.[62]

The actual power to substitute surplus and other tax revenues for the property tax, delegated for a two–year period in 1941, was renewed in 1945 but does not appear to have been repeated since.[63] In 1953 the legislature attempted to achieve that end in another way—by requiring the governor to include funds for debt service in his annual budget—but the Court of Appeals declared the method an unconstitutional infringement of the governor's discretionary authority in preparing the state budget.[64]

The board's role in setting the state property tax rate is not entirely ministerial. Its authority over the timing of bond sales and the approval of construction contracts, coupled with the reversion of unexpended capital appropriations to the annuity bond funds, gives it some flexibility in managing debt service requirements. No doubt the most significant determinants in establishing the property tax rate, however, are the absolute level of debt service and the extent to which, by grace of the governor and the General Assembly, appropriations are made to the annuity bond fund through the state budget.[65]

By 1943 the panic that had led the board to consider moving the state archives to abandoned mines had dissipated, and planning commenced for postwar construction. In that year the General Assembly created a Commission on Post–War Reconstruction and Development, charging it with formulating "a program of public work projects to be commenced on the cessation of the present war" and making "definite recommendations" to the Board of Public Works for the allocation of funds for postwar construction.[66]

It is implicit from the 1943 act that the legislature was envisioning a major program embodying both state and local projects. Its focus, according to the act, was not only on the need for the improvements themselves but also on the need to assure an orderly transition to civilian employment for the men and women who would be released from the armed services. Although the board was empowered to monitor the workings of the commission in some respects—to approve expenditures and select all architects and engineers employed to do preliminary planning work for the commission, for example—its major role would be to receive, consider, and act upon the commission's ultimate recommendations.

The board was affected in two major ways by this program. Its sheer magnitude—ultimately well over a quarter billion dollars—obviously placed a considerable burden on the board merely to keep up with the routine superintendence of the projects.

62. Acts of 1951, ch. 412. This procedure was approved by the attorney general in an opinion letter to Sen. Louis L. Goldstein. 39 *Op. Att'y Gen.* 272 (1954).
63. The revenue picture was especially good in 1945. The legislature reduced the personal and corporate income tax for 1944 and 1945 by one–third (Acts of 1945, ch. 794) and authorized the board to apply any surplus revenues that exceeded appropriations by more than $2 million either to a reduction in the real property tax or to a further credit against the income tax (Acts of 1945, ch. 762). The board opted for both and thus effected a 50 percent reduction in income taxes and a 1 cent (10 percent) reduction in the property tax. See BPW Minutes, 17 October 1945, 6:453.
64. *McKeldin v. Steedman,* 203 Md. 89 (1953).
65. In fiscal year 1981, $58 million was appropriated to debt service through the state budget. The state property tax produced just under $89 million. See "Statement of the Revenues and Expenditures of Public Money for the Year Ending 30 June 1981," printed as an appendix to Acts of 1982.
66. Acts of 1943, ch. 981.

Equally significant, however, was the fact that for perhaps the first time the board was called upon to consider priorities among *local* projects, in terms of both making recommendations for legislative action and, with respect to school construction projects, actually distributing state bond proceeds.

On 16 March 1944 the commission made its first report to the board, recommending a number of projects, and the board immediately selected architects for seven of those projects. Five and a half months later the board selected architects for ten more. Indeed, a good bit of the board's time during the last two war years was taken up with postwar construction planning.[67]

When the legislature convened in 1945, it gave the go–ahead to some of these projects, and the board was back in the construction business in a big way. In one act the General Assembly directed the board to consider *and approve* a host of projects, ranging from a piggery for the state penal farm to new office and hospital buildings, and much in between. To finance these projects the General Assembly authorized an initial bond issue of $4,625,000, followed in 1947 with another issue of $11,695,000, and in 1949 with $16,373,000 more.[68]

During the summer and fall of 1945 the board approved over $22 million in state projects, as well as 782 local projects totaling nearly $230 million. It authorized payment of $175,000 in state assistance for the preparation of plans and specifications for fifty–seven of the local projects, most of these being school construction and road repair items.[69]

The board's role in school construction, which had always been a county concern, emanated from this reconstruction program. In 1949 the General Assembly authorized $70 million in state bonds to supplement the financing of local school construction. Fifty million dollars of this was, in effect, merely a lending of the state's credit to the counties; the state contributed bond funds to the counties, but the counties had to repay the contributions, plus the interest paid by the state, out of their share of certain taxes. The other $20 million was to be allocated as direct grants on a matching basis.[70]

The State Board of Education was given an initial role in the allocation of the loan funds by determining for the Board of Public Works "a priority of need for school buildings" among the counties; however, the acts provided that "no grant of financial assistance . . . shall be allowed until such grant has been finally ratified and approved by the Board of Public Works." The decision of the board was declared to be "final and conclusive upon all parties concerned." Similarly, with respect to the grant funds, although certain findings had to be made by the State Board of Education, the actual allocation to the counties and the terms of the grants were subject to determination and approval by the Board of Public Works.

This frenetic construction activity was to occupy the board's attention for quite a few years. Projects continued to roll in for consideration and approval; architects and engineers had to be selected, contracts let for construction, bonds sold, and construction work superintended. In 1947 the legislature gave the board some measure of relief when it created the Department of Public Improvements, to be headed by the chief engineer of Maryland, and charged it with carrying out most of the routine duties associated with public construction. Although the board still retained full ultimate control and responsibility over the superintendence of public works projects, the department was empowered, among other things, to select architects and engineers (subject to board approval), represent the board at bid openings, advise the board with respect to all matters pertaining to public improvements, and "perform the duties and

67. BPW Minutes, 16 March, 31 August 1944, 25 January, 15 May, 1 June, 10 July 1945, 6:290-91, 326, 364, 382-84, 395, 404-7.
68. Acts of 1945, chs. 994, 747; 1947, ch. 694; 1949, ch. 277.
69. BPW Minutes, 1 June, 10 July, 20 August, 25 September, 28 November 1945, 6:395, 404, 419-25, 438-43, 455-61.
70. Acts of 1949, chs. 488, 502.

functions conferred on it or delegated to it by the Board of Public Works." All contracts, plans, and specifications for public improvements had to be submitted to the department for its review.[71]

The haphazard, uncoordinated manner in which duties had been heaped upon the board has been noted several times. Finally, in 1951-52 a study was made of the board's organization and function. It was part of a more general study of the state government undertaken by a gubernatorially appointed Commission on Administrative Organization of the State. Headed initially by Simon Sobeloff (until his appointment by Gov. Theodore R. McKeldin as chief judge of the Court of Appeals) and then by Baltimore attorney Enos Stockbridge, the commission over a two–year period issued twelve reports in which it described the administrative structure of the state government and made a number of recommendations for change. The eighth report, issued in November 1952, dealt with public works.[72]

By and large the commission expressed its approval of the current administration of public works, finding no serious deficiencies. Most of its recommendations dealt with clarifying some procedures and coordinating the activities of the Department of Budget and Procurement, the Department of Public Improvements, and the State Planning Commission. Its only major recommendation pertaining directly to the Board of Public Works was that the board be "relieved of its responsibility under which it gives approval to thousands of minor transactions involving public works and property."[73]

The commission noted the expanded jurisdiction of the board over the years but observed that it had "never been given or has never taken upon itself detailed responsibities for supervision of administration." Rather, it had limped along with one part–time employee and had "relied for administrative assistance on the staffs of the three members in their major capacities." The board, said the commission, "should retain its authority over major decisions involving public works and property, but it should not be burdened with thousands of small items regarding which it cannot make informed decision." Such items should be transferred to other agencies for final action.[74]

In specific terms the commission recommended that the board retain jurisdiction over the construction of state office buildings, the issuance of bonds and opening of bids, and the selection of sites for new buildings. It should not be required to approve all change orders, however, but only where the aggregate change amounted to 10 percent or more of the contract. Moreover, board approval should not be required for the disposition of personal property worth less than $10,000.[75]

The legislature paid no attention to these recommendations, and so the board went on as it had before.[76] In a typical meeting of the 1950s, the board might be called upon to (1) adopt resolutions for the sale of various installments of previously authorized bond issues, (2) decide whether one agency or another should receive a set of the state code, (3) award construction contracts and approve projects or change orders for dozens of projects and agencies, (4) approve leases for various agencies, (5) consider reports on various matters, with or without taking action on them, (6) consider requests for allocations from the general emergency fund, (7) approve budget reallocations from

71. Acts of 1947, ch. 171.
72. Commission on Administrative Organization of the State, *Eighth Report* (Annapolis, 1 November 1952), MdHR 806666.
73. Ibid., 2:20.
74. Ibid., pp. 5, 20.
75. Ibid., pp. 20-21. An example of this tedious action occurred at the meeting of 29 May 1946, when the board had to approve the sale of seventy–five worn–out tires by the State Roads Commission for $7. BPW Minutes, 29 May 1946, vol. 7 (1946-48), p. 35.
76. A bill (S.B. 194) was introduced into the Senate in the 1953 session "relating to the powers and duties of the Board of Public Works and the Department of Public Improvements," but it never emerged from the Judicial Proceedings Committee. *S. Jour.* (1953), p. 263.

one program to another, (8) approve the sale of real estate or personalty or the transfer of property from one state agency to another, (9) approve repairs to state property, (10) approve the write-off of bad debts owed to state agencies, (11) approve local school construction projects for purposes of state financial assistance, (12) approve overtime pay, or extension of sick leave, or travel reimbursement for state employees, and (13) approve investments made by the state treasurer.[77]

Such a meeting—the type and variety of items coming before the board—illustrates graphically both the increased overall role of the state government itself in the general political, economic, and social fabric of the state and the increased role of the Board of Public Works in controlling the manner in which the state government's role would be exercised. Both phenomena arose, quite simply, from the gradual, but in the end dramatic, rethinking of what constituted the "Public Works of the State."

77. See, for example, BPW Minutes, 10 March 1952, vol. 9 (1951-52), pp. 368-402. Among the items considered were payment of $16.42 for emergency repairs to a state police barracks, $52.20 for the repair of lawn mowers for the School for the Deaf, approval to write off $12.00 in uncollectible debts due the Register of Wills of Frederick County and $4.75 due the State Barber board, and approval to transfer a dump truck from the Reformatory for Women to the House of Correction. Also approved was the issuance of $19 million in bonds and some major construction contracts and projects.

CHAPTER 8

The Overburdened Board: 1960-1983

The 1960s and 1970s are, by far, the most difficult decades to chronicle in the history of the Board of Public Works. Not only did the board's operations become more complex, they became more extensively documented and reported. The sheer paperwork routinely generated by the board's monthly (more recently twice monthly) meetings is simply immense.

That burgeoning paperwork has had two effects. It quite naturally inhibits the ability of a researcher to review in depth, or to correlate over a period of time, the myriad of individual items coming before the board. More important, it has required the three members of the board, each of whom has other important and time-consuming duties to perform, to spend an increasingly large portion of their time on board business and/or to rely increasingly on the advice of staff or administrative personnel.

In a real sense the 1960s and 1970s witnessed a paradox in terms of the board's functions. At the same time that most political scientists and management consultants were consistently recommending a retraction of the board's functions and activity, the legislature was piling ever more duties on it. The expanded delegation, moreover, was not merely a quantitative one; it served as well to thrust the board into wholly new domains that in many respects proved to be overrun with political thickets. This paradox forms the central theme of this penultimate chapter.

The Sobeloff–Stockbridge Commission, it will be recalled, recommended in 1952 that some of the more routine duties of the board be transferred or delegated to other agencies. Little or nothing, however, was done to implement that recommendation. The next serious study of the board was made in connection with the effort at overall constitutional revision in 1965-67. In June 1965 Gov. J. Millard Tawes appointed a study commission "to conduct an inquiry into the necessity for, and extent and nature of any amendment, modification or revision of the Constitution of Maryland, with particular respect to whether a constitutional convention should be held."[1] The Constitutional Convention Commission met over a two–year period and in the end not only recommended the convening of a constitutional convention to rewrite the existing century–old charter but drafted a proposed new constitution for the convention to consider.

1. Gov. J. Millard Tawes, statement of 16 June 1965, *Report of the Constitutional Convention Commission*, p. 419.

The constitution proposed by the commission made no reference to a board of public works. In its commentary the commission observed that most of the duties actually performed by the board were statutory rather than constitutional and concluded that "they could just as well be conferred upon a board of public works created by statute as upon a board of public works created by the constitution." The commission expressed the belief that "the vast majority of decisions made by the Board of Public Works is not of major importance," that "a high level board of this character is not required for the purpose of making such decisions, and that an appropriate official or agency should have the authority to take final action."[2]

The commission's objection to a constitutionally created board was actually part of a deeper concern over what it regarded as an inappropriate system of checks and balances within the executive branch of state government. It decried the division of significant executive power and responsibility among three constitutional officers and urged instead that all such power emanate from the governor. In that vein it also recommended that the comptroller and the treasurer be appointed by the governor, which, of itself, would have significantly undercut the status and political attractiveness of the board to the General Assembly. The commission had no objection to a statutory board of some type to coordinate particular matters, but it felt that such a board ought not to have constitutional status.

The recommendations of the commission were widely publicized. Ultimately a constitutional convention was called. It met from 12 September 1967 to 10 January 1968 and produced a proposed new constitution very much like that recommended by the commission, although after considerable debate a restructured board of public works was included among its provisions. Most of the debate in this area revolved around the status of the comptroller, and to a lesser degree the treasurer, and thus affected the board indirectly and from that perspective.

The convention's Committee on the Executive Branch ultimately recommended to the convention that the comptroller and the treasurer (and the attorney general) be appointed by the governor and thus lose their independent political base. Consistent with that determination and the philosophy behind it, the committee also recommended "that the Board of Public Works not be provided for in the constitution." The reason assigned to this recommendation reflected the thinking of the precursor commission—that the vesting of significant executive power "in a three-man board not responsible to the Governor, the majority of which is not even appointed by the Governor, is an unwarranted dilution of the Governor's executive authority and responsibility."[3]

These recommendations were by no means unanimous. Several minority reports emanated from the committee, recommending constitutional status for the comptroller and treasurer and the continuation of a board of public works. The minority report dealing with the board echoed to some extent the majority's concern over dilution of the governor's power, and it therefore suggested that membership on the board be increased to five, with the governor appointing the two new members.[4]

As a compromise the convention opted for continuing the comptroller as an elected constitutional office, repealing the treasurer's constitutional status, and restructuring (and renaming) the Board of Public Works. The proposed constitution provided for a three-member "Board of Review" composed of the governor, the comptroller, and "an officer in the executive branch designated by the governor." The duties of this board were broadly stated in one sentence: "The board shall act by majority vote and shall

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2. Ibid., pp. 152-53.
3. Constitutional Convention of 1967, Chief of Staff (Committee Recommendations File), 12 September 1967-10 January 1968, Committee Recommendation and Memorandum EB–1, 14 November 1967; Committee Report EB–1, 9 November 1967, MdHR 18323-1.
4. Ibid., Minority Reports EB–1(A), EB–1(B), EB–1(C), 17 November 1967.

hold its meetings in public or otherwise act in such manner and have such powers as the General Assembly may prescribe by law."[5]

It is idle to speculate as to what the effect of those decisions might have been, for on 14 May 1968 it all came to naught. On that day the electorate extended the existing board's constitutional lease on life by rejecting the new constitution 367,101 to 284,033.

Continuance of the board in its current form as a constitutional entity was not a major issue in the ratification debate, and rejection of the new charter did not abate the call for some revision in board functions. The Sobeloff–Stockbridge Commission recommendations of 1952 were repeated with even greater force by the Governor's Operating Economy Survey, a task force of business and political leaders created by gubernatorial executive order for the purpose of conducting a comprehensive review of the operations, practices, and procedures of state government. In its 1969 report, the survey stated with respect to the Board of Public Works:

> The growth of the State in size and complexity over the years indicates the need for a complete overhaul of the objectives and operations of the Board of Public Works through legislation. . . . It is apparent from reading the minutes of any meeting that the board is required to supervise, regulate and/or approve a myriad of details which should be delegated. It is absolutely essential to reduce the administrative burden of the three top officials in the State as their duties relate to the Board of Public Works.[6]

The same conclusion was reached four years later by an ad hoc committee created by the Board of Public Works itself. Consisting of personnel from the three agencies actually presenting agendas to the board and thus most intimately involved with its workings (i.e., the Department of Budget and Fiscal Planning, the Department of General Services, and the secretary to the board), the committee, in a memorandum to the board dated 7 December 1973, observed that:

> Over the past several years, there has been a marked proliferation of items on the agendum presented to the Board of Public Works at its monthly meetings for review and approval. This increase has been proportionate to the growth of State Government, but has reached a magnitude which has impaired the effectiveness of the board in fulfilling its constitutional duties.[7]

The committee made a number of specific recommendations to alleviate the agenda congestion, mostly involving a delegation of approval authority over routine items concerning personnel, procurement, leasing, and property disposition. Specifically, it was suggested that the board delegate to the secretary of personnel the authority to extend sick leave and to purchase training for state employees, and delegate to the secretary of general services: (1) approval of construction, renovation, maintenance, and repair contracts of less than $50,000, except those for which there was a single bid; (2) approval of invoices for appraisal and title examination fees of less than $5,000, pursuant to a schedule adopted by the board; (3) authority to award architect–engineering contracts of less than $10,000 and survey contracts of less than $5,000; (4) approval of all leases and lease renewals; (5) approval of all property dispositions, pursuant to board guidelines; (6) approval of capital equipment purchases except bid solicitations resulting in less than two bids; and (7) approval of all capital improvement change orders under $25,000 not exceeding 10 percent of the original contract amount.[8]

Most of those recommendations, according to the attorney general,[9] would require legislation to implement, but no such legislation was enacted, or apparently requested, in the 1974 session. Instead, at the urging of its Joint Budget and Audit Committee,

5. *Comparison of Present Constitution and Constitution Proposed by Convention* (Annapolis, 1968), p. 160.
6. Governor's Operating Economy Survey, *Report on Constitutional Offices* (Baltimore, July 1969), recommendation CO–29, p. 23, MdHR 806292.
7. Notes in the possession of the author.
8. Ibid.
9. According to the committee's memorandum to the board, each of the recommendations was reviewed with the attorney general as to its legality under existing law.

the General Assembly passed Senate joint resolution 10 requesting a study by the Department of Legislative Reference of the board's responsibilities. The resolution called attention to the considerable expansion in the board's duties since 1864 and concluded that by reason of that expansion the board's agenda "is so lengthy and complex it is difficult for sufficient time to be given to the many major decisions which the board is required to make." Perhaps unaware of the various studies already made, from the Sobeloff–Stockbridge Commission in 1952 through the ad hoc committee only a month or two earlier, the resolution also recited, as a reason for undertaking yet another study, that "there has been no overall study or review of the responsibilities of the Board of Public Works."[10]

The study authorized by the resolution was conducted by the Department of Fiscal Services, an arm of the legislature, and centered on a computer search of all references to the board in the state code (1,068 spread among 161 sections) and an analysis of four actual board meetings. The report was made to the Joint Budget and Audit Committee, which then sought comments on it from a variety of state officials. Not surprisingly, the consensus of their comments was very much in accord with what the previous investigative groups had recommended. Still no action was taken, either legislatively or administratively. This failure was given critical comment in the legislative auditor's 1976 report.[11]

It was in the 1976 legislative session that the seeds of substantial revision were finally planted, although it took five years for them to germinate. The impetus was a bill by a freshman delegate to abolish the board and to transfer its functions to the various cabinet departments. The bill never emerged from the Committee on Constitutional and Administrative Law to which it had been referred, but it produced enough interest to generate House joint resolution 145 calling for a broader study of the board's functions. That study, undertaken by a gubernatorial task force created pursuant to the resolution, produced a comprehensive report in October 1977 that (1) collected and summarized all of the board's constitutional and statutory duties, (2) made a series of twenty–three specific recommendations to delegate certain of those duties to other agencies and to "clean up" obsolete and inconsistent code references to the board, and (3) proposed a new management plan to improve the administrative efficiency of board operations.[12]

Some legislative changes, minor in nature, were made in the 1978 session of the General Assembly along the lines suggested in the task force report, but the major recommendations were not immediately implemented. Pressure was building, however, and it soon was joined into a confluence with demands from other quarters for revisions in the law and procedure governing state procurement and contracting. The result was the enactment in 1980 of a comprehensive new law on state procurement of supplies, services, and construction. This act, having a one–year delayed effective date, made or authorized a number of substantial changes in procurement practices generally and board procedures in particular, and that prompted yet another study.[13]

This final study to date, ordered by the governor in December 1980, was undertaken in light of the new law and was completed in March 1981.[14] It dealt primarily with the delegation, mostly conditional or partial, of board authority over low–cost or routine items that, for the first time, was authorized by statute. A more detailed

10. The resolution appears as joint res. 18 in the Acts of 1974.
11. Department of Fiscal Services, *Study of the Board of Public Works* (Annapolis, 9 July 1974), p. 17; Department of Fiscal Services, *1976 Audit Report, Board of Public Works* (Annapolis, March 1976), State Department of Legislative Reference, Annapolis.
12. *H. Jour.* (1976), p. 587; *Report of the Task Force to Study the Functions of the Board of Public Works* (Annapolis, October 1977), MdHR 789550.
13. Acts of 1980, ch. 775.
14. Governor's Task Force on State Procurement Regulations, Subcommittee on Delegation of Board of Public Works Authority, "Report of Findings, Conclusions and Recommendations," 6 March 1981, State Department of Legislative Reference, (hereafter Governor's Task Force on Procurement Report).

analysis of the new law, and the regulations and procedures emanating from it, is reserved for observation later in this chapter. Suffice to say here that at long last some of the improvements urgently recommended thirty years earlier have been achieved. It remains to be seen, of course, whether the changes will indeed be salutary.

The last two decades have seen the Board of Public Works become, in truth, a microcosm of state government itself. Its expanded role has mirrored the expanded role of the larger entity. To some extent that had been the case for many years, but what marks this last period for special consideration is not so much the quantitative increase in board activity as its immersion into entirely new, and not entirely calm, waters.

The 1960s and 1970s were activist years for state government. People demanded more and varied services from their government, and the reapportionment of state legislatures in response to Supreme Court edicts created bodies willing to provide those services. In part, at least in Maryland, this expansion was into entirely new areas not formerly subject to governmental intrusion at any level; in part it involved picking up activities that local governments for fiscal reasons found necessary to shed.

All of this, fortuitously or otherwise, happened to coincide with two other major phenomena of the period—the growing demand for affirmative action programs as a means of implementing the equality of treatment guaranteed both by law and public morality, and an increasing concern, especially after the revelations collectively referred to as "Watergate," over ethics in government. At some point people began to realize that in addition to its political authority, the state had become a significant economic entity and that its economic power could be marshaled as effectively as its political power to achieve desired social goals. One principal method of so utilizing the state was, alternatively, to restrict or to mandate the types of people and firms with whom the state would do business. As in Maryland the Board of Public Works was the fulcrum for awarding major state contracts, and to that extent was a principal exerciser of the state's economic power, it soon became the legislature's designee for enforcing these various social policies, some of which were occasionally in conflict.

The intrusion of state government into new areas or those of traditionally local concern and the task of enforcing social policy by means of state contracting created a new range of vexing problems for the board. A wider spectrum of political considerations crept into the decision-making process as the political subdivisions, minority groups, labor unions, small business enterprises, and others all scrambled for bigger shares of the state's largesse; these political considerations, in turn, caused public interest (and in particular the interest of the news media) to focus more intensely on board activities.

The origin of the state's (and the board's) involvement with public school construction has already been mentioned briefly.[15] It came about as part of the post-World War II capital reconstruction program, beginning in 1947 with a modest subsidy to the counties from the state budget. The more massive program began in 1949 with $20 million in capital grants and $50 million in loans. The loan program involved not

15. See chapter 7. For a more comprehensive history, see Commission to Study Revision of the School Construction Program, *Maryland School Capital Program* (Annapolis, 15 January 1977), MdHR 789304 (hereafter *Maryland School Capital Program*).

so much the lending of state money as a lending of the state's credit. Under this program, which continued until 1971, the state would sell general obligation bonds, lend the proceeds to the subdivisions for school construction projects at just a shade over its actual debt service cost, and recoup the funds out of the subdivisions' respective shares of various taxes collected by the state. The counties were thus able to take advantage of the state's better credit rating, and consequent lower interest cost, without risk or cost to the state.

The board's role in public school construction, as noted, was fairly substantial. It not only had to superintend the selling of the bonds, but it had to make final determinations as to how the proceeds would be allocated among the subdivisions and their proposed projects and actually approve each project and each loan. By 1967 the General Assembly had authorized the sale of $335 million in bonds of this type, and over $227 million of the proceeds had actually been lent.[16]

A good bit of the board's authority with respect to disbursement of the bond proceeds was temporarily curtailed when the credit–lending program was revised in 1967. Under the new program the bond proceeds were allocated among the subdivisions in accordance with a fixed formula, thus eliminating the need for the board to approve allocations, project priorities, or individual projects. Supervision over disbursements was vested in the State Department of Education.[17]

That arrangement lasted only four years. In 1971 the state undertook a considerably expanded role in financing local school construction, and the board was assigned a much more active role in administering the program. The substantive heart of the new program was the legislative direction that "from and after July 1, 1971, the State shall pay the costs in excess of available Federal funds of all public school construction projects and public school capital improvements in the counties and Baltimore City which have been approved by the Board of Public Works." The board's role in this venture was broadly stated:

> The Board of Public Works is authorized to adopt rules, regulations and procedures for the administration of the programs provided for by this section. The rules, regulations and procedures adopted by the board may prescribe requirements for: the development and submission of long–range plans, the submission of annual plans and/or plans for specific projects, the submission of other data or information relevant to school construction or capital improvements, the approval of sites, plans and specifications for the construction of new school buildings or the improvement of existing buildings, site improvements, competitive bidding, the hiring of personnel in connection with school construction or capital improvement, the actual construction of school buildings or improvements thereto, the relative roles of different State and local governmental agencies in the planning and construction of school buildings or school capital improvements, and any other requirements involving school construction and capital improvements necessary or appropriate for the proper implementation of this section.

The "authority, responsibilities, powers and duties" of all state and local officials with respect to the new school funding program were made "subject to the rules, regulations and procedures adopted by the Board of Public Works," and all funds appropriated to finance the program were to be administered in accordance with those rules and regulations.[18]

The new program became effective 1 June 1971, which gave the board little time to put it in place. Shortly after the enabling legislation passed, the governor appointed a committee, chaired by the lieutenant governor, to develop a set of rules and pro-

16. See Acts of 1949, ch. 488 ($50 million); 1953, ch. 609 ($20 million); 1956, ch. 80 ($75 million); 1961, ch. 432 ($20 million); 1962, ch. 25 ($20 million); 1963, ch. 542 ($50 million); 1965, ch. 25 ($50 million); 1967, ch. 655 ($50 million). As to disbursement of the loan proceeds, see exhibit C ("Cash Disbursements from the State Treasury") to the respective "Statements of Receipts and Expenditures" for fiscal years 1951-67, appearing in the Acts of 1952-68.
17. Acts of 1967, ch. 142, sec. 2.
18. Acts of 1971, ch. 624, sec. 1, enacting new sec. 130A to *Md. Ann. Code,* (1957), art. 77.

cedures for the program. On 25 May 1971 Lt. Gov. Blair Lee presented his committee's report to the board, and it was immediately attacked by a contingent from Montgomery County.[19] Although that county had opposed the program of total state funding from the beginning, the bone of contention in terms of the proposed rules was the creation of an Interagency Committee (IAC) consisting of the state superintendent of schools and the secretaries of state planning and general services to screen the projects proposed by the counties. Under the 1967 law that function was discharged by the state superintendent alone, and the county had apparently worked out a satisfactory *modus vivendi* with him.

In all, the board set aside the better part of three long meetings for consideration of the rules and regulations. On 14 June 1971 it heard from fifteen people and considered a large number of letters and other written material concerning the proposed rules. On 29 June the board finally adopted the rules, more or less in the form as originally proposed.[20] In addition to the IAC, the rules prescribed the kinds of costs that would, and would not, be eligible for state payment, the kinds of plans, specifications, designs, and construction documents that would be required, and the procedures for disbursing the state funds.

The storm over the rules was only the beginning. Each year, as the IAC made its recommendations for the projects to be funded in the next fiscal year, representatives from the subdivisions whose projects had been rejected or deferred would descend upon the board seeking their restoration. This began in July 1971 with respect to the projects for fiscal year 1972 and continued each year thereafter.[21] Each February the board set aside one daylong meeting for consideration of the IAC recommendations and the critical comments from the various subdivisions, normally led by Montgomery County and Baltimore City.

The decisions made by the board at these special February meetings had a dual impact. They not only determined the fate of individual school projects in the various subdivisions, thus influencing a broader spectrum of decision making by local school boards and county governments, but they also established the aggregate size of the annual school construction bond bill presented to the legislature by the governor. That in turn influenced many other capital proposals, which found themselves in competition with school construction for funding dollars.

The new program turned out to be unexpectedly immense, as the subdivisions, some of which had long neglected necessary construction or renovation because of fiscal constraints, dipped into the new state pocketbook.[22] In the first five years—up to June 1976—393 school projects had been either completed or were under construction, of which 177 involved new construction and 200 entailed additions or modernization. The remaining 16 were for auditoriums. By June 1977 nearly $1.1 billion in state school construction bonds had been authorized, of which over $722 million had been sold.[23]

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19. BPW Minutes, 25 May 1971, p. 65, MdHR 40281-216-2.
20. Ibid., 14 June 1971, p. 18, MdHR 40281-217-1; 29 June 1971, p. 4, MdHR 40281-218-1.
21. Ibid, 13 July 1971, pp. 1-68, MdHR 40281-220-1/2; 17 February 1972, pp. 3-32 MdHR 40281-229; 20 February 1973, pp. 2-21, MdHR 40281-244; 21 February 1974, pp. 1-8, MdHR 40281-257; 26 February 1975, pp. 1-4, MdHR 40281-274; 25 February 1976, pp. 1-6, MdHR 40281-297; 22 February 1977, pp. 1-4, MdHR 40281-327. See also transcripts for 25 February 1976, pp. 1-296, MdHR 40328-38-1/8; 22 February 1977, pp. 1-128, MdHR 40328-68-1/7.
22. In an attempt to be equitable to those subdivisions that had committed local funds to school construction in the recent past, the General Assembly also provided for state payment of the debt service obligations on local school construction bonds sold to finance projects begun in and after 1967. That aspect of the program, though expensive, did not involve the board in any significant way.
23. *Maryland School Capital Program*, pp. 6,7. It is interesting to note that Montgomery County, which protested the program most vociferously, ended up having nearly twice as many projects approved as any other subdivision. In terms of dollar value the principal beneficiaries were Anne Arundel County ($153 million), Baltimore County ($150 million), and Montgomery County ($106 million).

State funding of school construction quite naturally served to lift a significant burden from the local governments (and the local property tax rates), but it soon placed in jeopardy the state's own excellent bond rating. In 1976 the New York rating organizations began to express concern over the dramatic rise in authorized state debt, and the governor, the General Assembly, and the board started to look for ways to bring the rate of debt creation under some control.

As the school construction program was a major contributing factor in the overall problem, it became a prime candidate for retrenchment. In January 1976 Gov. Marvin Mandel appointed a commission to study revision in the school construction program, noting that the program had been far more expensive than originally anticipated and warning that if continued unchecked it threatened the state's sound fiscal structure. The commission, chaired by Treasurer Williams S. James (also a member of the board), made a report in January 1977 recommending a number of substantial cutbacks in the program, primarily through changes in the board's implementation of rules and regulations.[24]

The subdivisions, which had been such profound beneficiaries of the program, were not enamored with the proposed curtailment, but after considerable discussion the board amended its rules in order to effectuate most of what the commission recommended. Essentially the changes made certain cost items completely ineligible for state funding and reduced the level of funding on a variety of renovation and modernization projects.

The year 1975 was the high–water mark of the school construction program. In the years 1971-75, $1,042 million had been authorized; in the next five years, 1976-80, the total authorizations amounted to only $283 million. That did not, however, eliminate either the annual protests by the subdivisions over IAC deletions or the need for the board to set aside one or more entire meetings to consider and deal with those protests.[25] Though operating at a much reduced rate, the program still requires careful review of the IAC recommendations and facing the annual protests from disappointed county officials.

Despite predictable outcries from the localities, the school construction program seems to have worked well, and even those who came before the board to argue for restoration of projects deleted by IAC offered praise for its administration. The one blight, in terms of administration, arose from the dishonesty of the IAC executive director, Alford Carey, which first came to light in February 1975. Carey was ultimately charged with and convicted of forgery, false pretenses, bribery, and extortion in connection with contracts for the construction of "relocatable" classrooms.[26] As a result of that incident, the General Assembly in 1976 made IAC a statutory body within the State Department of Education, subject to its administrative and budgetary review, and in 1978 it strengthened the laws relating to extortion by state and local employees.[27]

The general school construction program was the state's major effort in assuring an adequate educational plant, but it was not the state's only effort in that regard. Supplementing that program were two others, which provided for grants to the subdivisions to assist in the construction of community colleges and area vocational schools. The Board of Public Works played an important role in each.

There was a common format to both the community college and vocational school programs. The subdivisions submitted project requests to the State Board of Education, which would determine a "priority of need" among the applicants and recommend to

24. Ibid., p. 7.
25. See, for example, BPW Minutes (tape rec.), 28 February 1979, MdHR 40369-569/573; 11 February 1980, MdHR 40369-663/666; 6 February 1981, MdHR 40369-762/765.
26. See *Carey v. State*, 37 Md. App. 589 (1977); *Carey v. State*, 43 Md. App. 246 (1979), *cert. den.* 445 U.S. 967. See also BPW Minutes, 26 February 1975, MdHR 40281-274.
27. Acts of 1976, ch. 539; 1978, chs. 448, 449.

the Board of Public Works which requests should be allowed and which should be denied.[28] Final authority for allocating state funds, derived from periodic bond issues, and for project approval was vested in the Board of Public Works.

The community college construction program began with a modest $5 million bond issue in 1961. By 1979 over $108 million had been authorized, from which community colleges were constructed and expanded throughout the state.[29] The vocational school program began in 1965 and was of shorter duration. Altogether $30 million was expended to assist in the construction and equipping of some forty schools.[30]

These programs, though important to the subdivisions and to the development of adequate vocational and community college facilities, were essentially adjunctive for the board. They never produced the controversy or the headaches engendered by the general school construction program, at least not for the Board of Public Works.

The school construction programs described above were essentially intergovernmental—grants of one kind or another to assist the subdivisions in discharging functions that were ultimately the responsibility of the state but which had been delegated by the legislature to the subdivisions. Hospitals stood on a different footing. Although there were a number of public hospitals in the state, most were either specialized facilities—psychiatric hospitals or those for the retarded—or, in the case of University Hospital, an adjunct to the public medical college. With few exceptions the provision of general hospital services was in private hands.

It was not uncommon for the state from time to time to lend or give construction money to private institutions. Several private colleges had been aided in this manner over the years, as had at least one private hospital. But this was usually done through individual bond bills directing the proceeds to be paid over directly to the institution and ordinarily did not involve the Board of Public Works except in terms of selling the bonds.[31] In 1964, however, perceiving a need to assist in the development of additional general hospital capacity, the General Assembly departed from the individual grant or loan approach and authorized a systematic program of lending money to private hospitals to assist in financing new construction projects.[32] That program directly involved the board.

The 1964 act authorized a $50 million bond issue to be used to make below–market–rate construction and renovation loans to voluntary nonprofit hospitals. General administration of the loan program was vested in a seven–member Maryland Hospital Commission, which was to receive applications and make recommendations with respect to them to the board. Final approval authority was vested in the board. For its part the commission was responsible for judging the applications in accordance with eight statutory criteria, including (1) need in the community for the project, (2) need of the hospital for the loan, and (3) ability of the hospital to repay the loan.

A number of problems with the hospital funding program arose almost immediately, and indeed they were foreseeable before the legislation was enacted. The most

28. In 1959 the State Board for Community Colleges took over the role of the State Board of Education with respect to the community college construction program.
29. See Acts of 1961, ch. 373; 1964, ch. 27; 1965, ch. 709; 1967, ch. 656; 1968, ch. 588; 1969, chs. 440, 500; 1970, ch. 715; 1971, ch. 350; 1972, ch. 344; 1974, ch. 669; 1975, ch. 293; 1979, ch. 441. See also *Annual Reports of the Maryland Comptroller*, 1961-79 (Annapolis: statement A–9).
30. See Acts of 1965, ch. 740; 1967, ch. 654; 1969, ch. 607; *Annual Reports of the Maryland Comptroller*, 1961-79 (Annapolis, 1961-79), statement A–9.
31. See, for example, Acts of 1951, ch. 414, providing a $1 million construction grant to Johns Hopkins University. See also *Johns Hopkins Univ. v. Williams*, 199 Md. 382 (1952), sustaining the validity of such grants; also Acts of 1962, ch. 130, providing a construction grant of $2 million to Provident Hospital in Baltimore. That act did require the disbursements to be approved by the Board of Public Works.
32. Acts of 1964, ch. 138.

pressing difficulty was to resolve constitutional doubts over the validity of the program. The act permitted loans to religiously affiliated hospitals, and the bonds could not be sold until the underlying First Amendment question was answered: Could public funds be used for such a purpose?

To resolve that issue a test case was arranged. The commission recommended that the board approve loans to three hospitals with varying degrees of religious affiliation—Greater Baltimore Medical Center (GBMC), which had a historical but very loose tie with the Presbyterian Church; Church Home and Hospital in Baltimore, which had a somewhat stronger and more direct affiliation with the Episcopal Church; and St. Joseph's Hospital in Baltimore, owned and operated by an order of Catholic nuns. The board approved nominal loans of $25,000 to each hospital and so set the stage for the challenge.[33]

As it turned out, the case involved more than just the church–state issue, which the Court of Appeals had little difficulty in resolving in favor of the act.[34] Also at issue was the scope of the delegation of final approval authority to the board and an unanticipated conflict of interest question arising from the fact that the state treasurer, John A. Luetkemeyer, who voted for the three loans, happened to be on the board of trustees of one of the hospitals. These matters also were decided in the board's favor, but in reaching that result the court, for the first time in many years, was forced to take a good look at the kind of agency the board had become.

The court had some difficulty with what appeared to be the unbridled discretion vested in the board. Although there were fairly definite statutory criteria governing the commission's decision–making process, neither those criteria nor the commission's recommendations themselves were binding on the board. Indeed there were no standards set forth in the act governing the board's approval or disapproval of an application.

The court observed that the role of the board in choosing among applications and fixing the amounts to be awarded was characteristic of the functions of an administrative agency and that the fact that it was comprised of three important elected officials did not exclude the board "from the operation of the legal principles applicable to administrative agencies." The general delegation of power "in regard to the creation of State debt," said the court, might not suffice if it were construed as authorizing a delegation to the board "without the imposition of any standards to canalize its discretion." In the end, however, after what looks like some fancy judicial footwork, the court found an implied directive that the board "should be guided by the same broad criteria for the public welfare" as guided the commission. Thus it said:

> That, in the delegation of authority to the board, there is no express statutory provision that its decisions cannot be arbitrary or unreasonable is immaterial. Such a limitation is implied as a necessary condition of the validity of the delegation. We find that there are implied limitations upon the exercise of the board's authority under the Act that its decisions should be made in consideration of the adequacy of hospital facilities throughout the State, that the recommendations of the Commission, while not binding upon the board, are to be taken as a guide to it in its determinations, and that its decisions are not to be arbitrary or capricious but to be made in the public interest.[35]

These expressions would seem to have meaning beyond the particular statute under scrutiny. As we have seen, most of the authority delegated to the board is extremely broad. Whether in terms of superintending the sale of bonds, managing state property, or carrying out the myriad of other duties imposed on it, rarely does the legislation authorizing the delegation provide clear and specific standards to guide the board's action. Perhaps it was in tacit and fearful recognition of this void that the court reached way down and brought up some "implied" standards.

33. BPW Minutes, 17 September 1965, pp. 171-72, MdHR 40281-127.
34. *Truitt v. Board of Public Works*, 243 Md. 375 (1966).
35. Ibid., pp. 388, 389, 390, 391-92.

The conflict of interest question was much more narrow. It involved a statute, since repealed and replaced by a much broader code of conduct, that made certain types of actions criminal but specifically exempted the Board of Public Works from the purview of the statute. That exemption governed the result; it reflected, said the court, "a legislative apprehension that, in view of the multitude of matters in which the State has an interest, an over–technical, unrealistic application of the sound conflict of interests principle might make it difficult for the State to find citizens of the caliber and broad interests whom it wishes to act on its behalf." Notwithstanding the legal exemption the court suggested that it would be prudent for a board member having such an interest as the treasurer to abstain from voting, and, in fact, when the question of the full loan to the particular hospital came back before the board, Luetkemeyer did not vote on the matter.[36]

The court's decision, filed in June 1966, should have cleared the way for loans to be made under the act, but another snag developed—this one with the commission. The commission had been appointed promptly, applications for assistance had been filed with it almost immediately, and it had had a year or more to review them. Yet the commission was unable to make a decision. It made one study of hospital needs and then ordered another. In August 1966 it told the board that it needed time to review the latest study and would have no recommendations until October.[37]

Pressure was building. The applicant hospitals were becoming desperate. GBMC, for example, had already commenced construction with demand bank loans and found itself in an extremely precarious position when the banks, fearing unfavorable comment from their examiners, pressed for repayment. A state loan was its (and possibly the banks') only salvation. Other hospitals had delayed their projects waiting for the legal challenge to be resolved and were anxious to get started. The state loan had to be coordinated with other fund–raising efforts, which required some lead time.

The commission finally acted, after its chairman resigned, on 2 September 1966, when it recommended approval of nine applications and deferral of nine others. The board quickly adopted those recommendations and thus the program was finally under way. Eventually fourteen hospitals received forty–year loans under the program.[38]

The board discharged a multiple role in the hospital funding program. In addition to considering and approving the individual loans, which were its primary responsibilities, the board had to establish the interest rate applicable to each loan and then review and approve the loan documents. The board also, of course, had to coordinate the sale of the bonds with the disbursements required under the loan agreements. Altogether the board devoted parts of at least fourteen meetings between April 1966 and June 1967 to these matters.

Once the initial hurdle was cleared, the hospital funding program went smoothly, except in the case of GBMC. That hospital, recently formed through the merger of two old, established Baltimore City hospitals, seemed to be having some serious management problems. It was also in the process of forsaking the city and building a new large facility in Baltimore County not more than a mile from the facility proposed by St. Joseph's. The commission had some reservations on both scores, but was especially concerned over the managerial problems and refused to recommend approval of the loan unless a number of significant changes were made in the hospital's governing structure. GBMC and its worried lenders attempted to pressure the board into approving the loan—$7 million—without requiring the changes insisted upon by the commission, which the hospital was reluctant to make. But the board remained firm.[39]

36. Ibid., p. 397; BPW Minutes, 2 September 1966, MdHR 40281-144.
37. E. D. Rosenfeld Associates, *Survey and Report of Hospital Facility and Service Needs of the State of Maryland,* June 1966, MdHR 806193; BPW Minutes, 2 August 1966, p. 10, MdHR 40281-142.
38. BPW Minutes, 2 September 1966, pp. 3-5, MdHR 40281-144.
39. Ibid., 9 January 1967, pp. 38-39, MdHR 40281-149-1.

The hospital then conceded and agreed to the changes, and eventually the loan was approved.

The school and hospital construction programs have been described in some detail because they illustrate, to some extent, a new type of discretion thrown upon the board by the legislature—that of allocating state funds among competing nonstate applicants, public or private. Those were not, however, the only programs in which the board was given that role. The legislature was equally active in a host of other areas, the result being a delegation of generally similar duties with respect to state assistance for the construction of airports, nursing homes, community mental health centers, sanitary (solid waste and water treatment) facilities, and shore erosion projects.[40]

Most of these construction aid programs were intended to complement matching federal assistance of one kind or another, and they generally followed a common format. More than in the school and hospital programs, statutory criteria were established for both applicant eligibility and the amount that could be granted or lent. Thus, although the board had some discretion in these matters, its role was much more limited. For the most part other agencies of state government were responsible for reviewing the applications in light of the statutory standards, with the board making certain that all the proper bases had been touched. Still, each of these projects—particularly the sanitary facilities program—were massive undertakings that produced a great deal of paperwork and thus required careful scrutiny from the board. The water quality loan authorizations alone amounted to over $365 million between 1965 and 1975.[41]

In 1970 the General Assembly enacted a comprehensive law regulating the filling and dredging of wetlands in the state. The law distinguished between state wetlands and private wetlands, the latter being essentially those that had been transferred by the state into private hands. Control over the use of private wetlands was vested in the Department of Natural Resources; control over state wetlands was placed in the Board of Public Works. Specifically, as subsequently amended, the law forbade the dredging, filling, or bulkheading of state wetlands, or the discharge of storm drains into such wetlands, without a license from the board.[42]

The law was unclear as to the procedure to be used by the board in determining whether to issue a wetlands license. It specified that the secretary of natural resources was to investigate each application, take such evidence as he thought advisable, and make a recommendation to the board. The act further stated, however, that "after a hearing in the local subdivision affected," the board would decide whether to grant the license.[43] The question was whether the board itself had to conduct each of these hearings. If that were the intent, the board was facing an enormous burden.

In August 1970 the attorney general opined that the law permitted the board to designate its secretary to represent it at these wetlands hearings, provided that ultimate responsibility for approval or disapproval remained with the board itself.[44] Rather than delegate this function to its secretary, however, who was already having difficulty keeping current in light of the board's increased workload, the board ap-

40. Acts of 1964, ch. 117 (airports); 1961, ch. 643; 1968, ch. 443; 1972, ch. 119; 1975, ch. 656; 1977, ch. 703 (nursing homes); 1972, ch. 120; 1973, ch. 286; 1974, ch. 648; 1975, ch. 417; 1977, ch. 702 (community health centers); 1965, ch. 651; 1966, ch. 561; 1967, ch. 699; 1969, ch. 445; 1973, ch. 55; 1974, ch. 286 (sanitary facilities); 1969, ch. 444; 1975, ch. 360 (shore erosion projects).
41. Acts of 1965, ch. 809; 1966, ch. 561; 1967, ch. 689; 1968, ch. 445; 1973, ch. 55; 1974, ch. 286; 1975, ch. 262.
42. See *Md. Ann. Code* (1974), Natural Resources Article, sec. 9–101 (j), (m); Acts of 1970, ch. 241.
43. *Md. Ann. Code,* Natural Resources Article, sec. 9–202 (c).
44. 55 *Op. Att'y Gen.* 350 (1970).

pointed a wetlands administrator and charged him with, among other things, receiving applications, conducting the hearings, and making appropriate recommendations to the board. By 1974 applications for licenses were pouring in at the rate of over four hundred a year, and so a second hearing officer was appointed. These two men continue to process more than four hundred applications annually, holding the required hearings and making recommendations to the board. In about 1 percent of the cases the board itself conducts the hearing—usually where the project is substantial or controversial or where a bond or compensation to the state may be required. Otherwise the board cursorily reviews the hearing officers' recommendations and more or less routinely follows them.

The duties and responsibilities delegated to the board over the years have been so varied that a common element among them really does not exist. The closest one can come to such a common element is that of "procurement," in the broadest sense of the term. A great deal of what the board does, in one way or another, can be said to involve that function. In superintending the sale of state bonds, the board procures purchasers of that debt; in overseeing the various construction projects authorized by the General Assembly, it procures all manner of services and supplies from architects, engineers, appraisers, consultants, contractors, and materialmen; in managing state property, it procures buyers, sellers, lessors, and lessees, as well as the range of supplies and services needed to keep the property in good repair. Indeed, those responsibilities not involving the procurement function in some way can fairly be said to be collateral for the board.

It is not surprising, then, that procurement, especially for construction, capital equipment, and professional services, has been the center of attention—for the board itself and for those who have studied or observed it. The manner in which state contracts are let is obviously of great interest to many people, and particularly in recent times it has become the focal point for such public attention as has been given to board activities.

That attention has been, by and large, of two types: one, exemplified by the various official or semiofficial reports examining board activities, has focused on the procurement function generally, from a managerial or operational perspective; the other, emanating primarily from the news media, and occasionally from disappointed bidders or the General Assembly, has focused on particular actions or decisions. To some extent, of course, there is and always has been an overlap. Once the spotlight is placed on a particular decision or action, it tends to move around and illuminate certain other actions and indeed the underlying decision–making processes. But generally until 1979-80 these two frameworks of attention proceeded along different paths.

As we have seen, procurement—in the context of supervising the construction of the House of Correction at Jessup, the normal school at Towson, and the tobacco warehouses—was one of the first nonconstitutional duties given to the board, and it quickly spread beyond construction into supplies and equipment. Not until 1920 and the creation of the Central Purchasing Bureau was the board relieved of direct responsibility for procuring supplies and printing services,[45] but it still remained responsible, as confirmed in 1939, for supervising "the expenditure of all sums appropriated for the acquisition of land, buildings, equipment, new construction and other

45. Acts of 1920, ch. 184. The bureau itself consisted of nineteen state officials, including the three members of the Board of Public Works. Of greater importance than the bureau itself were the authorization for and appointment of a purchasing agent to run the operation on a day–to–day basis. See also chapter 6.

capital expenditures," except in connection with "roads, bridges, and highways," as well as for approving all contracts for the expenditure of loan proceeds.[46]

The 1939 act, as has been noted, created the Department of Budget and Procurement, headed by the erstwhile purchasing agent, Walter Kirkman, and that department provided staff assistance to the board in connection with construction procurement matters. But although that department and its successors—the Department of Public Improvements created in 1949 and the Department of General Services created in 1970—did a great deal of the detail work, the contracts themselves, and all amendments to them, still had to be submitted to and approved by the board.

That flow of paperwork, often involving relatively miniscule amounts or routine change orders over which there was no dispute, was the primary concern of the various commissions and task forces studying the board and its activities, beginning with the Sobeloff–Stockbridge Commission in 1951-52. Each successive study commission urged that these small and routine matters be delegated to the executive control agencies and withdrawn from full board review. There was no public disagreement with either the assessment that the board was being unnecessarily inundated with minutia or with the recommendations made to correct the problem. Nor was there any public clamor for changing the system, however, so nothing was done. The board's meetings became longer and more frequent. The work got done; the board simply coped.

It was the second type of attention—more particular and more dramatic—that caused the most commotion and directed public attention to how the board discharged its procurement function. Interestingly, the genesis of that attention did not even involve the board.

In 1973 allegations were made, and highly publicized, that, while governor of Maryland, Spiro Agnew had been the linchpin in a bribery and extortion conspiracy involving the selection of architects and engineers on state road, bridge, and tunnel projects. These projects, under the law, were considered exempt from board jurisdiction and thus never came before it.[47] Such projects were controlled instead by the State Roads Commission, and indeed the chairman of that commission was alleged to be part of the conspiracy. Nevertheless, once lit, the spotlight moved around and soon focused on the overall process by which professional services—particularly those of an architectural or engineering nature—were obtained, and that, of course, did involve the board. There was considerable public clamor for total competitive bidding for these services—requiring that the procuring agency prepare specifications and solicit bids and that the board award the service contract to the low bidder. The architect and engineering societies, on the other hand, very much opposed such requirements, insisting that professional services were not susceptible to competitive bidding.

Seeking advice on the matter, Governor Mandel appointed a task force chaired by Dr. Abel Wolman, professor emeritus at Johns Hopkins University, to review the various methods used by the federal government and other states to select architects and engineers for capital projects and to make appropriate recommendations for changes in the methods used by the Maryland state agencies. The task force report,

46. Acts of 1939, ch. 64. See also chapter 7.

47. Prior to the creation of the Department of Transportation (DOT) in 1970, it was clear that the board had little or no jurisdiction over transportation projects committed by law to the State Roads Commission. For one thing, they nearly always involved either roads, bridges, or tunnels, which were excepted from the purview of art. 78A, sec. 7, of the Code, and for another they were not normally financed with state general obligation bonds and thus probably did not fall within the board's authority under art. 78A, sec. 1. In any event the board never attempted to interfere with the commission's contracting prerogatives. The situation is somewhat different today. Approval of the board is required for the sale of consolidated transportation bonds, used to finance nearly all capital projects of the department (*Md. Ann. Code*, Transportation Article, sec. 3–207), the issuance of revenue anticipation notes (sec. 3–211), service contracts such as those involved in the Agnew scandal (secs. 2–103 [h], 2–310, 2–316), acquisition of railroad corridor property (sec. 2–105), use of surplus funds in the Transportation Authority Fund (secs. 4–313, 4–314), and a host of other matters.

received by the governor on 18 December 1973, was implemented almost immediately by executive order.[48]

In conformance with the Wolman recommendations, the executive order attempted to coalesce the desire for competitive bidding with the recognition that some projects might not lend themselves to that process because of the nature of the professional services needed. The order could not, of course, directly affect the board's ultimate authority or discretion, which was statutorily based. Instead it attempted to deal with the process by which the procuring agencies made their recommendations to the board and thus get at the problem indirectly.

The order did essentially three things: (1) it created two Professional Service Selection Boards (PSSBs), one for DOT and one for the Department of General Services, each to be comprised of both agency and public members; (2) it specified that no contract for architectural or engineering services other than on a competitive bid basis was to be entered into by the agency or recommended to the Board of Public Works unless approved by the appropriate PSSB; and (3) it created a procedure to be followed where competitive bidding was regarded as unfeasible. That procedure required the PSSB to approve the noncompetitive selection for the particular project and involved then a process of publicly inviting firms to submit their qualifications, prequalifying such firms, and then dealing only with those firms on the qualified list. Generally the procuring agency was to be given three firms from the qualified list, selected in inverse order to the value of the state contracts each had received during the preceding two years. The agency then could choose its nominee to the Board of Public Works by one of three methods: (1) competitive negotiations, in which it would deal sequentially with one firm at a time until it reached a satisfactory agreement; (2) parallel negotiations, in which simultaneous negotiations would be undertaken with all the firms; or (3) invited price bids, with the agency selecting the low bid.

Although there continued to be some grumbling by a few architects and engineers, generally the storm subsided, and most people thought that the problem had been resolved. In its 1974 session the legislature confirmed the executive order by enacting its provisions, with few changes, into law.[49] Once the PSSBs were functioning, all architectural and engineering contracts came to the board through that process and were considered and approved without much ado.

Then came the matter of selecting a construction manager for the Baltimore subway system, bringing with it a swirl of charges and countercharges and involving the board in a public dispute with Secretary of Transportation Harry Hughes.

Construction of the Baltimore subway system—actually an eight–mile line only half of which was to be underground—was the largest single project ever to come before the board. Notwithstanding that some 80 percent of the $800 million venture was to be federally funded, it involved considerable state funds and thus the expenditures had to be approved by the board. Overall responsibility for the project was invested in DOT and in particular the Mass Transit Administration, one of the five modal units within that department.

At some point DOT determined that it did not have the resources to manage such a large construction project. With at least tacit approval of the board, the department requested, and on 2 June 1975 received, permission from its PSSB to solicit interest from outside consultants for construction management services. Eighteen firms responded to the initial DOT questionnaire. After a two–step review process five firms (or consortia) were found to be qualified and were invited to submit proposals. The proposals were to be in two parts—a technical proposal, describing in detail the services to be performed, and a cost proposal, stating the estimated cost of performing those services.

48. Executive Order 01.01.1974.04, 9 January 1974.
49. Acts of 1974, ch. 732.

Although DOT had made an in–house estimate of the number of people and man–hours it would take to perform the construction management services, it did not advise the bidders of that estimate or include it in the request for proposal. Rather, it asked the bidders to develop their own estimates of what would be required and to base their bids on those respective estimates. Thus, although the general scope of the work was defined, there was a great deal of flexibility in the DOT request. To some extent that is what caused the problem. The five proposals received by DOT on 14 June 1976 varied widely, as they were based on different estimates of the number of man–hours required to do the job.

DOT reviewed the five proposals in accordance with evaluation criteria it had previously established and ultimately recommended to its PSSB the firm of Ralph M. Parsons, a national consortium based in California, which it believed had submitted the best proposal. Unfortunately, the Parsons bid, at $25 million, appeared to be about $7 million more than that submitted by a consortium that included a local firm, Baltimore Contractors, purportedly having extensive "political connections." The PSSB approved the DOT recommendation, and thus the Parsons firm was recommended to the Board of Public Works.

The matter was first formally presented to the board on 12 November 1976 and immediately ran into trouble. The board questioned the price disparity and asked for more information; DOT insisted that the Parsons proposal was the best one and that the price disparity was more apparent than real.[50] For seven months the issue lay unresolved, with DOT refusing to reconsider its recommendaton and the board refusing to approve the Parsons proposal. Charges and countercharges of favoritism were bandied about both publicly and privately. The press generally sided with Hughes, viewing the matter in the context of an attempt by Baltimore Contractors to exert political influence on the board and subvert the selection process. Parsons, not without some influence of its own, enlisted the aid of two influential U.S. senators and, through them, the federal Urban Mass Transit Administration, which, as the principal financier of the project, also had something to say about the matter.

The affair came to a head in May 1977. On 2 March the board had by unanimous vote formally disapproved the Parsons contract. A week later the board directed that the selection process begin again on an emergency basis. With construction scheduled to commence in July and no prospect of resolving the impasse, Hughes resigned as secretary of transportation on 26 May 1977, maintaining in his letter of resignation that the board was, in effect, tampering with the selection process.[51] With the governor already under federal indictment for other alleged misfeasance and the press viewing the Hughes resignation as an act of conscience, the board was under extreme pressure to back off and approve the Parsons proposal as submitted.

The board continued to demur, however, perhaps partly because its own integrity was on the line, but also because it simply was not satisfied with the Parsons submission. Once a replacement was named for Hughes, the board considered whether DOT could get along without a construction manager. When the new secretary, Herman Intemann, advised that in light of the imminence of construction activity that was not possible, the board undertook to renegotiate with Parsons.[52]

Eventually there was a more or less happy ending to all of this. Through Intemann, a new contract was negotiated with Parsons—at $21.5 million rather than the $25 million originally proposed to the board. Part of the difference involved a reduction in scope of work; part arose from price concessions made by Parsons. With some fanfare

50. BPW Minutes, 12 November 1976, pp. 13-14, MdHR 40281-318, and transcripts, pp. 5-138, MdHR 40328-59-1/6; BPW Minutes, 26 November 1976, pp. 6-7, MdHR 40281-320, and transcripts, pp. 3-47, MdHR 40328-61-1/2.
51. Ibid., 2 March 1977, pp. 61-62, MdHR 40281-328-2; 11 March 1977, pp. 49-50, MdHR 40281-329-2.
52. Ibid., 6 July 1977, pp. 5c-5j, MdHR 40281-336-1.

the contract was presented to and approved by the board on 3 August 1977.[53] The board expressed great satisfaction with its achievement; Parsons got the contract; and, running as an anticorruption candidate, Harry Hughes was elected governor of Maryland in November 1978. In a nice and fitting postscript to this unfortunate episode, it is worth noting that Governor Hughes now sits amicably and congenially on the board with Comptroller Louis L. Goldstein and Treasurer William S. James, his erstwhile adversaries in the Parsons matter.

The brouhaha over the Parsons contract involved only one aspect of the procurement function—the acquisition of professional services. Other controversies were brewing at the same time that also created some temporary problems, most of them coming under the general heading of "affirmative action."

Although until 1977 there was no general statutory requirement that procurement contracts subject to board approval be let through competitive bidding to the lowest bidder,[54] that was the process generally used by the board, at least with respect to construction and supply contracts. Such a process served three important goals: (1) fiscal economy—paying the lowest price; (2) avoiding the appearance of favoritism in the handing out of state contracts; and (3) ease of administration (so long as everyone was bidding on the same plans and specifications).

Paradoxically, it was in part the very benefit of that process that created a deficiency in it. Competitive bidding rewarded the firms that were most efficient, which in modern times came to mean large established firms—those that could borrow money more cheaply, get bonds more easily, were familiar with state bidding and monitoring procedures, and could benefit from other economies of scale. That, for all practical purposes, tended to freeze out minority contractors and other new, small entrants. They simply could not compete based on price alone, and thus they received little or none of the lucrative state business. Correction of this deficiency involved tampering to some degree with pure competitive bidding, and that brought a number of new problems to the board, at least for a time.

The first attempt to equalize opportunity in terms of public contracting came in 1961. In that year the legislature decreed that all state construction contracts had to contain certain antidiscrimination clauses—that no such contract could be awarded to any contractor unless he agreed not to discriminate in employment by reason of race, creed, color, or national origin. The same obligation had to be made part of all subcontracts. Enforcement was vested in the Board of Public Works. Upon complaint by any person, the board was obliged to "cause an immediate investigation of the charges," and if it found a violation the state could, in effect, void the contract and pay only for the reasonable value of the services performed under it.[55]

The nondiscrimination clauses required under the act were routinely inserted into all construction contracts, and to that extent at least the law was enforced. How effective the provision was in achieving the law's purpose is far less clear. It does not appear that the board undertook very many, if any, investigations or actually annulled any contracts by reason of employment discrimination, although neither does it appear that the board was asked to do so. For the most part, especially after 1965, the state's Human Relations Commission assumed the role of monitoring unlawful employment discrimination.

The situation began to change in 1976 with the full advent of affirmative action, in terms of both minority groups and small business generally. The major thrust came

53. Ibid., 3 August 1977, pp. 75-76, MdHR 40281-340-3, and transcripts, pp. 1-22, MdHR 40328-81-1.
54. See *Terminal Construction Corporation v. State Board of Public Works*, Circ. Ct. of Balto. City, *Daily Record*, 29 July 1957. The first statutory requirement for competitive bidding came with Acts of 1977, ch. 921, and even that allowed some exceptions. Compare, however, former art. 64B, sec. 45 of *Md. Ann. Code*, enacted by Acts of 1969, ch. 160, requiring competitive bidding on certain contracts let by DOT's Mass Transit Administration.
55. Acts of 1961, ch. 448.

from black businessmen and legislators, and it involved two aspects—assuring greater participation by black-owned contractors and greater employment opportunities for blacks in white-owned firms doing public business.

The 1961 law was directed at the second goal, as was a 1976 amendment to the State Code of Fair Practices promulgated by gubernatorial executive order. The revised code, effective 1 November 1976, required all state contracts to contain not only antidiscrimination clauses but also provisions for an affirmative action plan "directed at increasing the utilization of women and members of minority groups on State Public Works Projects" that complied with specific criteria set out in the executive order. Responsibility for enforcement was placed squarely with the board; its approval of the affirmative action plan was made a prerequisite to the award of a contract.[56]

For a while, again at the urging of black legislators, a small compliance unit was established under the board's aegis for the purpose of monitoring compliance with the new executive order. Eventually, however, the departments of Transportation and General Services developed their own capabilities in this regard, and the board's unit was disbanded. Plan approval and monitoring are now done on the departmental level.

The push to increase the share of state business going to black firms came primarily in the context of the Baltimore subway project. As part of its overall compliance with federal affirmative action requirements, DOT adopted a standard that anticipated 10 percent of the subway work going to minority contractors or subcontractors. For a while—with respect to the first two or three contracts—that created a dual problem for the board: deciding who is and who is not a minority contractor and deciding what to do when the 10 percent goal was not met.

An example of the second problem arose in connection with the first major construction contract submitted to the board—the Bolton Hill tunnel. When that contract came before the board on 22 October 1976, an association of black contractors protested, claiming that the amount reserved for minority contractors was considerably less than 10 percent.[57]

The low bid on the prime contract was $41.6 million, of which only $1.1 million appeared scheduled for minority subcontractors. Sen. Robert Douglass, a black legislator acting as spokesman for an association of black contractors, recommended that the contract not be approved. The DOT representative responded that diligent efforts had been made to distribute a greater share to minority firms, but that there were only certain parts of the work for which qualified minority firms could be found. The board directed DOT to negotiate the matter with the association and deferred action on the prime contract. On 12 November the board was informed that after several meetings an understanding had been reached whereby through joint ventures and other techniques the minority share had risen to $2.8 million—more than double the original proposal.[58]

The first problem—deciding who is a minority contractor—was more subtle. The bids submitted by the prospective prime contractors were supposed to contain a breakdown on the intended subcontractors. The black contractors would go over the subcontractor lists carefully to see whether and to what extent those firms were black-owned and operated. In a number of instances in the beginning, claims were made that some of the subcontractors designated as minority firms were really owned by whites and that the black presence was a sham. Where joint ventures between black and white firms were involved, as they often were, disputes arose as to what percentage of the business awarded to those joint ventures should be counted toward the overall 10 percent goal. On at least two occasions the board was put squarely in the middle

56. Executive Order 01.01.1976.05, 9 July 1976.
57. BPW Minutes, transcripts 22 October 1976, pp. 91-96, MdHR 40328-57-3.
58. BPW Minutes, 22 October 1976, pp. 43-44, MdHR 40281-316-3; transcripts, 12 November 1976, pp. 18-35, MdHR 40328-59-1.

of the controversy.[59] Eventually, however, that type of controversy also got resolved at the departmental level.

Perhaps in response to some of these matters, the General Assembly began to display a greater interest in the overall procurement process. That interest ultimately produced two pieces of legislation, each, it would seem, enacted without regard to the other.

At the behest of the House Appropriations Committee a joint resolution was adopted in the 1977 session calling for a legislative task force to study the total purchasing and procurement policies of the state.[60] The task force met several times in 1977, collected a great deal of data, and recommended to the legislature a new consolidated procurement code modeled in part after a proposed code drafted by the American Bar Association. In its initial draft the task force suggested removing virtually all procurement responsibility from the Board of Public Works and vesting that function in a new seven–member board consisting of four members of the governor's cabinet (the secretaries of general services, budget and fiscal planning, and transportation, and the commissioner of higher education) and three members appointed by the governor from the general public. That suggestion was short lived; in the version actually submitted to the legislature in December 1977 the functions proposed for the new board were given to the Board of Public Works.[61]

Companion bills to enact the new code were introduced into the 1978 session, but neither was passed. The Senate version, heavily amended in the Senate, died in the House in part because of serious concerns expressed by the members of the board. Following that defeat the task force was reconstituted and went to work again, meeting several times during 1978 and collecting even more data. Once again proposals for a new procurement code were drafted and presented to the 1979 session; once again they passed the Senate unanimously, after being amended, but never emerged from the House Appropriations Committee. Finally, on the third try in 1980 the new code was adopted, with a one–year delayed effective date.[62]

This new procurement code was expected to have a dramatic effect on the board's operations. The key provisions are in new section 2–101 of article 21. Subsection (a) vests in the board "power and authority over the procurement, management, and control of all supplies, services, construction, and other items procured by the state," including the authority "to set policy and to adopt regulations" consistent with the statute. In that regard subsection (b) directs the board to adopt regulations "governing procedures for the review and approval of procurement contracts" and "for delegating procurement authority."

Thus, while the code centralizes full authority in the board over all state procurement (including, for the first time, procurement by the University of Maryland), it expressly permits (again for the first time) broad delegation of that authority. It looks, in other words, for the board to set basic procurement policy, subject to the statute, but except in a relatively few instances not to become too deeply involved in the implementation of that policy.

While the legislature was in the process of fashioning a new procurement code, it also attempted to deal with the problem in a more general way. In 1979 it passed two bills authorizing the Board of Public Works to adopt regulations that would permit procuring agencies to enter into leases and capital project contracts without prior board

59. Ibid., transcripts, 12 November 1976, pp. 18-78, MdHR 40328-59-1/3.
60. Acts of 1977, joint res. 28 (*H. joint res. 19*).
61. Department of Fiscal Services, Purchasing and Procurement Policies Task Force, *A Proposed Bill to Consolidate, Simplify and Enhance Maryland State Procurement Statutes*, preliminary working draft 1, October 1977, pp. 7-8, MdHR 806289; preliminary working draft 2, 13 December 1977, State Department of Legislative Reference.
62. *S. Jour.* (1979), pp. 635, 1125; (1980), pp. 233, 3663; *H. Jour.* (1979), pp. 3199, 3217; (1980), pp. 777, 3251; Department of Fiscal Services, Purchasing and Procurement Policies Task Force, minutes, 2 August 1978; Acts of 1980, ch. 775 (codified as art. 21 of *Md. Ann. Code,* effective 1 July 1981).

approval. Four conditions were attached to the delegated contracting authority: (1) that the contract fall within an "expenditure classification" established by the board; (2) that the aggregate annual dollar value of the contract (and any change orders) be less than a "monetary threshold" established by the board; (3) that these monetary thresholds "be sufficiently high to free the board from direct review of relatively insignificant items while not impairing the strong public policy in favor of direct board review"; and (4) that an "accountability or reporting system approved by the board be established" to inform the board with respect to actions taken by the agencies.[63]

In large measure, this was the approach ultimately taken in the procurement code, but the 1979 bills had one piece of "excess baggage" not to the governor's liking. They each provided that the board's regulations were subject to approval by the Joint Legislative Committee on Administrative, Executive and Legislative Review. Decrying such legislative veto over executive agency rules, the governor vetoed both bills, presuming that the vetoes would be overriden and that such action would pave the way for a test case on "the constitutional authority of the General Assembly to condition the exercise of an administrative agency's rule making authority upon the approval of a legislative committee."[64] As expected, the legislature overrode both vetoes early in its 1980 session, and the two acts took effect as chapters 1 and 2, Acts of 1980.[65]

Following enactment of the new procurement article, the governor appointed a Governor's Task Force on State Procurement Regulations to develop the required regulations for both the board and the four procurement agencies (the departments of General Services, Budget and Fiscal Planning, Transportation, and the University of Maryland). In the course of its work the task force examined in detail the actual agendas of the board during the preceding two and a half years, from which it was able to compile a quantitative analysis of the board's activities.

That analysis is revealing. It documents statistically the alarms raised nearly thirty years earlier by the Sobeloff–Stockbridge Commission. On the average the board had before it over 3,200 items a year, which, considering that it meets twice monthly, translates into about 125 items per meeting. About 90 percent of those 3,200 plus items involved less than $25,000, and indeed it was not uncommon for the board, at a single meeting, to have before it several massive construction projects involving personal presentations and considerable discussion along with a bundle of requests to approve change orders amounting to less than $5,000, each of which also had to be reviewed.[66]

To appreciate the effect the new law and the regulations promulgated under it may have, it is necessary to understand how the board has actually been operating.

The board considers three agendas at its meetings. Until 1980 these consisted of (1) the board secretary's agenda, (2) the Department of General Services agenda, and (3) the Department of Budget and Fiscal Planning agenda. The secretary's agenda,

63. S.B. 1036, 1037 of 1979, *S. Jour.* (1979), pp. 966, 967.
64. Governor's veto of S.B. 1036, 29 May 1979. See Acts of 1979, pp. 2250-52.
65. A "wrinkle" of sorts developed by virtue of the enactment in the 1980 session of the new procurement law (ch. 775). Sec. 24 of that act, which was uncodified, provided that all laws that were inconsistent with ch. 775 "are superseded to the extent of the inconsistency." Concerned that there might be some inconsistency between the 1979 enactments, which amended art. 78A of the Code (Public Works) and ch. 775, and that those enactments might thus be "superseded," the legislature reenacted the 1979 laws, with only style changes, again in 1981. See S.B. 953 of 1981. Once again the governor vetoed the bill "in order to continue to preserve my stong policy objections to legislative vetoes, and to insure that the courts are presented with a constitutional question which is not tainted by an apparent gubernatorial approval." Governor's veto of S.B. 953, 19 May 1981. See Acts of 1981, pp. 3480-84. That veto was also overridden, and the new law took effect as ch. 1, Acts of 1982. The test case envisioned by the governor, as of this writing, has yet to be filed.
66. Governor's Task Force on Procurement Report, app. B, pp. 23-25.

normally considered first, was more or less a miscellaneous one. It included proposals for bond sales, public school construction projects, sanitary facilities sewerage loans, Mass Transit Administration real estate purchases and leases, wetlands licenses, and commitments to subdivisions under the Open Space Program. The General Services agenda consisted of construction and capital equipment contract awards and change orders, contracts for professional services, property acquisitions and leases, and a miscellany of other construction, contract, or property–related items. The Budget and Fiscal Planning agenda dealt primarily with items affecting the state's operating budget—requests for allocations from the board's general emergency fund, personnel matters, contracts funded through the operating budget (usually for services or supplies), disposition of state personal property, and all contracts for goods and services, except those pertaining to roads, bridges, and highways, for the Department of Transportation.

This last item—transportation contracts—was often the largest part of the Budget and Fiscal Planning agenda, at least in dollar volume. Inclusion of those items on the Budget and Fiscal Planning agenda came about because of a 1971 executive order,[67] and as DOT moved into the massive subway project it desired to have more direct access to the board. In 1980, at the behest of Governor Hughes, the format of the board agendas was restructured so that DOT now has its own agenda for board action and there is no longer a separate Budget and Fiscal Planning agenda. The nontransportation items formerly included on that agenda now appear on a special supplement to the board secretary's agenda.

These agendas are lengthy. The major items often contain hundreds of pages of support material—appraisals, reports, synopses of procedures used—and not infrequently they are supplemented by letters and statements from interested persons not associated with an agency. Several people work full time in the three agenda–producing agencies just preparing their bimonthly submissions.

To deal with this mass of material, the board has resorted to the practice of holding "preboard meetings," usually a day or two before the public meeting. Normally the governor does not attend the preboard meeting but may send a representative. The comptroller and the treasurer (at least the current ones) attend in person, along with one or more staff persons. The purpose of the preboard meeting is not to make final decisions but rather to familiarize the members with what is on the three agendas. It gives them an opportunity to review the items, ask questions, and seek additional information.

These preboard meetings usually last several hours. In addition, prior to the actual commencement of the scheduled board meeting the members normally confer for a few minutes in the governor's office, again to take a quick run–through of the major items. The public meetings are where the decisions are actually made. They are normally held in the governor's reception room in the State House and often last most of the day. The three members of the board sit at the head of a long table, accompanied by the board secretary and his or her assistant, and the secretaries of general services, budget and fiscal planning, and state planning and/or their assistants. At the foot of the table is a lectern for anyone wishing to address the board, and seated around the room are representatives of the news media and other interested persons.

In order to carry out the recommendations of all of the various study groups since the Sobeloff–Stockbridge Commission, as well as the apparent intention of the legislature, the task force appointed to develop regulations under the new procurement law recommended that the Board of Public Works restructure the content of its various agendas, develop some general procurement guidelines, and delegate to the four procurement agencies more or less final procurement authority over most small or non-

67. Executive Order 01.01.1971.14, 15 June 1971.

controversial items.[68] With some modifications the board adopted these recommendations. As a result its three agendas are now divided into two parts—those major items requiring direct board approval (action agendas) and those items handled by the four agencies, which are merely reported for the board's information (procurement agency action reports).

It is not necessary to describe all of the details of the new procurement regulations, which have been published in the *Maryland Register* and subsequently in the *Code of Maryland Regulations.*[69] In general they follow the basic recommendations made by most of the study commissions and task forces over the years. Direct procurement authority over data processing and service contracts (other than architectural and engineering contracts) involving less than $100,000 has been delegated to the Department of Budget and Fiscal Planning, along with responsibility for minor modifications in those contracts and the procurement of state automobiles. Authority to approve construction contracts up to $50,000, architectural, engineering, maintenance, and capital equipment contracts up to $25,000, minor change orders, and state leases complying with guidelines approved by the board has been delegated to the Department of General Services, unless they involve transportation or University of Maryland projects. Similar authority with respect to those types of contracts has been delegated, respectively, to the Department of Transportation and the president of the University of Maryland.

In the estimate of the task force that recommended these regulations, the changes in procurement policies will remove from the board's action agendas approximately 60 percent of the construction contracts, 75 percent of the maintenance contracts, 60 percent of the service contracts, 65 percent of the capital equipment contracts, 33 percent of the change order items, nearly all invoices previously requiring board approval (approximately 280 invoices resulting from noncompetitive procurement), and nearly all items concerning the disposal of personal property.[70]

The first two years' experience under the new law and regulations has been mixed. By reason of the delegation to the procurement agencies, many of the routine items that formerly clogged the board's agenda now appear in summary form on the procurement agency action (activity) reports and no longer come before the board for approval. On the other hand, because of the expanded jurisdiction of the board, the Budget and Fiscal Planning supplement to the board secretary's agenda has grown considerably. Board Secretary Sandra R. Koester estimates that the Budget and Fiscal Planning supplement has increased from an average of about twenty items per meeting to between thirty and forty items, and an examination of some of the recent meetings supports that estimate.[71]

Most of this expansion, according to Koester, arises from the required submission to the board of (1) a broad range of proposed agreements desired by the University of Maryland, (2) data processing contracts, and (3) renewals and modifications of multiyear service contracts, all or most of which formerly were handled without board intervention. The treasurer, in particular, has expressed some concern over the matter, and it may be that further fine–tuning of the procurement regulations will be forthcoming.

68. Governor's Task Force on Procurement Report, pp. 13-19.
69. See *Maryland Register* 8, 1 May 1981, pp. S–1-S171; COMAR, Title 21.
70. Governor's Task Force on Procurement Report, pp. 13-19.
71. See, for example, BPW Minutes, tape recs., 30 June 1982, MdHR 40369-848/852. Included in the Budget and Fiscal Planning and General Services activity reports were 209 items—one as small as $7.75—that formerly may have required board action. The Budget and Fiscal Planning action agenda contained sixty items.

Indeed, some tinkering has already occurred. In its 1982 session, the legislature enacted at least eight laws that modify or affect procurement procedures.[72] Some of these are merely clarifying in nature; others, such as chapter 141, which permits the procurement of "human, cultural, social or educational services" by methods other than those set forth in the procurement law, are more substantial.

72. See Acts of 1982, chs. 4, 115, 116, 141, 172, 328, 608, 915.

CHAPTER 9

Epilogue

We come now to the end of the history of the Board of Public Works and a time for some editorial comment. There is a noticeable tendency for biographers to become identified with, and apologists for, the subjects of their biographies, whether the subject is a person or an institution. It is a tendency that must be consciously resisted if the biography is to be objective. I have tried in writing this chronicle to offer that resistance and to be objective. I shall lower my guard just a bit in this brief concluding chapter.

The Maryland Board of Public Works is almost unique in American government. Although some cities have such creatures or variations of it, there is nothing like it either at the federal level or among the other states. Some states have coordinative bodies of one kind or another, serving some of the functions committed to our Board of Public Works, but none, to my knowledge, have a constitutionally based troika quite like our board.

From a political perspective the board serves first and foremost as a dilution, through sharing, of the executive authority that would otherwise be vested in the governor. That indeed was the principal objection to it voiced by the Constitutional Convention Commission and, to a degree, by the 1967 Constitutional Convention itself, both of which believed that executive power should be centralized in the governor. An interesting response to that philosophy was given by the Reorganization Commission in 1921. It said in its report:

> The Governor has no need for further power. Indeed, the expression,—so frequently used as one of the strong features of the cut–and–dried reorganization plan which has started the round of the States,—"centralize power in the hands of the Governor," really involves the use of loose language; for, in large measure, the things done in other States thus to centralize power in the Governor, do not centralize any new power in him at all, but simply remove the checks and balances, which now exist, and which, certainly for the most part, ought to be retained upon the exercise by the Governor of the powers he already has.[1]

Certainly the state of Maryland could survive without the board; forty–nine other states have done so. But in both politics and government (assuming that there is some distinction between them), convenience, rather than necessity, is the more relevant criterion. Over the years the board has served its function well. Notwithstanding some occasional frolics and failings, it has acted with dedication and efficiency and has effectively discharged the myriad of responsibilities delegated to it. The men serving on the board have not always acted unanimously, but despite their independent, and occasionally antagonistic, political constituencies and viewpoints, they have generally

1. *Reorganization Commission Report,* p. 20.

worked well together in a cohesive and constructive manner. As an institution the board has managed to earn and retain the confidence of the General Assembly, which has heaped more and more responsibility on it.

One effect, not often recognized, of placing jurisdiction in the board rather than in the governor alone (or in some other executive official) is to open up the decision-making process to public scrutiny. Decisions made by single officials may have to be explained later, but the process by which they are made is often shielded from public view. That is not the case with the board. Even before the organized drive for "open government" in the 1970s, board meetings were announced in advance and were open to the press. The effect of this accessibility has generally been salutary. Governor Mandel once observed:

> The press coverage served a good purpose. Those appearing, particularly to [i.e., from] agencies and departments became aware that they better be fully prepared, because the board was prepared and the media was present. Again we began to receive more complete and better documentation, and of equal importance, matters of a questionable nature, that formerly would slide by, were not even presented.[2]

Although it was asserted by the Constitutional Convention Commission that former governors William P. Lane, Theodore R. McKeldin, and J. Millard Tawes believed that consideration should be given to "reorganizing" the board,[3] there seems to be no sentiment among its current members for curtailing its authority, much less doing away with it. Comptroller Goldstein and Treasurer James, in particular, are strong advocates for continuing the board as it now exists, as was former Governor Mandel. He felt that it was "the best source for the Governor to get an overview and to know the day to day operation of the State Government," noting further that:

> Every phase of the State was touched by the [board's] agenda. And the officials responsible for a particular agency knew it. . . . And when you asked questions the employees knew they better be on their toes. I always felt that I was more knowledgeable and better prepared by being a member of the [board]. The work of the board is almost a blueprint of the State operation.[4]

Comptroller Goldstein (a board member at this writing for twenty–four years) and Treasurer James have echoed these sentiments, which are also supported by my own contacts with the board. The three members are necessarily exposed to more information, and more reliable information, about the operations of state government through service on the board than any of them could acquire otherwise, and the discussion among the three knowledgeable officials probably produces a more informed decision than might otherwise be obtained. A dissent by any one member is likely to receive public attention, which at least subconsciously tends to force the other members to rethink their own positions.

In all, it seems clear that the board has been a good thing for the state. The delegates to the 1864 Constitutional Convention accidentally stumbled onto something worthwhile.

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2. Personal letter to author, 24 March 1981.
3. *Report of the Constitutional Convention Commission*, p. 153.
4. Personal letter to author, 24 March 1981.

Appendix A.

Commissioners of Public Works and Members of the Board of Public Works, 1825-28, 1851-1982

MEMBERS OF THE BOARD OF PUBLIC WORKS, 1825-28

1825-1828	Samuel Stevens, Jr., Governor Thomas Buchanan Richard Potts Robert W. Bowie Isaac M'Kim	William Howard E. F. Chambers Robert H. Goldsborough Littleton Dennis

COMMISSIONERS OF PUBLIC WORKS, 1851-64

1851-54	John S. Gittings Charles R. Stewart	William P. Ponder John R. Franklin, president
1854-55	Joshua R. Nelson Charles R. Stewart, president	Moore N. Falls Samuel Chamberlain
1856-57	Moore N. Falls, president George Peter	Joshua R. Nelson Benjamin Lankford
1857-59	Henry R. Reynolds, president Frederick Schley	George Peter Benjamin Lankford
1860-61	Lemuel Roberts, president Nathaniel Duke	Frederick Schley Henry R. Reynolds
1861-63	Lemuel Roberts, president Nathaniel Duke	Edward Shriver Frederick Fickey, Jr.
1863-64	Edward Shriver, president E. J. Hall	Frederick Fickey, Jr. Andrew McIntire

MEMBERS OF THE BOARD OF PUBLIC WORKS, 1864-1983

	Governor	*Comptroller*	*Treasurer*
1864-67	Augustus W. Bradford	Robert J. Jump	Robert Fowler
1867-69	Thomas Swann	William J. Leonard	Robert Fowler
1869-72	Oden Bowie	William J. Leonard, 1869-70 Levin Woolford	Robert Fowler, 1869-70 John Merryman
1872-74	William Pinkney Whyte	Levin Woolford	John W. Davis
1874-76	James B. Groome	Levin Woolford	Barnes Compton
1876-80	John Lee Carroll	Levin Woolford, 1876-78 Thomas J. Keating	Barnes Compton
1880-84	William T. Hamilton	Thomas J. Keating	Barnes Compton
1884-85	Robert M. McLane	J. Frank Turner	Barnes Compton
1885-88	Henry Lloyd	J. Frank Turner	John S. Gittings, 1885-86 Stevenson Archer
1888-92	Elihu E. Jackson	L. Victor Baughman	Stevenson Archer, 1888-90 Edwin H. Brown
1892-96	Frank Brown	Marion deKalb Smith	Spencer C. Jones
1896-1900	Lloyd Lowndes	Robert P. Graham, 1896-98 Phillips Lee Goldsborough	Thomas J. Shryock

	Governor	*Comptroller*	*Treasurer*
1900-04	John W. Smith	Joshua W. Hering	Murray Vandiver
1904-08	Edwin Warfield	Gordon T. Atkinson, 1904-07 Joshua W. Hering	Murray Vandiver
1908-12	Austin L. Crothers	Joshua W. Hering, 1908-10 William B. Claggett, 1910-11 Charles H. Stanley	Murray Vandiver
1912-16	Phillips Lee Goldsborough	Emerson C. Harrington	Murray Vandiver
1916-20	Emerson C. Harrington	Hugh A. McMullen	John M. Dennis, 1916-18 William P. Jackson
1920-35	Albert C. Ritchie	E. Brooke Lee, 1920-22 William S. Gordy, Jr.	John M. Dennis
1935-39	Harry W. Nice	William S. Gordy, Jr.	Hooper S. Miles
1939-47	Herbert R. O'Conor	J. Millard Tawes	Hooper S. Miles
1947-51	William P. Lane	James J. Lacy, 1947-50 J. Millard Tawes	Hooper S. Miles
1951-59	Theodore R. McKeldin	J. Millard Tawes	Hooper S. Miles
1959-67	J. Millard Tawes	Louis L. Goldstein	Hooper S. Miles, 1959-63 John A. Luetkemeyer
1967-69	Spiro T. Agnew	Louis L. Goldstein	John A. Luetkemeyer
1969-77	Marvin Mandel	Louis L. Goldstein	John A. Luetkemeyer, 1969-73 J. Millard Tawes, 1973-75 William S. James
1977-79	Blair Lee III (Acting)	Louis L. Goldstein	William S. James
1979-83	Harry Hughes	Louis L. Goldstein	William S. James

Appendix B.

Guide to the Records of the Board of Public Works, 1851-1983

By Patricia M. Vanorny and Susan R. Cummings, Maryland Hall of Records

The guide to the records of the Board of Public Works consists of two parts and includes the minutes of the Commissioners of Public Works, its predecessor agency, and the State Tobacco Warehouse Commission, whose findings were filed with the board. The first section, Series Title Descriptions, contains a brief description of each set of records, listed alphabetically by series title. Each description includes the date span and an explanation of the format, content, and arrangement of the records. Except as stated otherwise, the records were generated by the Board of Public Works.

The second section, Series Unit Inventory, also arranged alphabetically by series title, contains an itemized list of the records. The series entries follow a standard format and contain the following elements: agency of origin, standardized series title, inclusive dates, series unit description, and accession number. The following example illustrates these elements.

BOARD OF PUBLIC WORKS (General File).
1950-1959.
Land Office - Maryland Correctional
Institution for Males.
MdHR 40,241-24

An entry begins with the name of the agency, shown in capital letters, that generated the series. Following the agency name is the standardized series title, shown in parentheses, which is the name of the record series. These two elements are repeated when a record series contains one or more series units. A series unit is a distinct portion of a record series and refers to a box of files, tape, volume, or microfilm. The last three elements of the series entry are unique to the series unit. The inclusive dates are expressed in terms of years, and may include month and day if the series is arranged chronologically. The series unit description outlines the content of the series unit and usually reflects the arrangement of the series, especially if it is alphabetical. If a description is unnecessary, as asterisk is used because the automated finding aids program requires that something appear in that space. The three part accession number is a unique identification number assigned to each series and series unit. MdHR refers to the Maryland Hall of Records. The subsequent number refers to the series; references to microfilm are preceded by two letters. The number after the dash refers to the series unit.

SERIES TITLE DESCRIPTIONS

(Agenda) 1947-1961
Lists of matters to be considered at the board meetings. Arranged chronologically by date of meeting.

(Agreements and Contracts) 1946-1978
Agreements, contracts, letters, plats, plans, and reports pertaining to investments of state funds, construction and repair projects, land transfers, personnel matters, and rental of equipment, office space, and land. Arranged alphabetically by agency name and topic.

(Bond Issues) 1922-1977
Correspondence, resolutions, legal opinions, and procedure and policy statements relating to

the issuance of state bonds for capital improvement programs and other loans authorized by the General Assembly. The files also contain follow-up materials, which include applications for funds, allocation statements, accounting records, agreements, and reports. One set of files, 1922-1961, is arranged chronologically by the date of the loan program. The other two sets, 1949-1966 and 1966-1977, are each arranged alphabetically by the name of the loan program. For related records and those prior to 1922, see (General File).

(General File) 1875-1979
Correspondence, petitions, reports, bids, contracts, legal opinions, agreements, financial accounts, budgets, maps, plats, and drawings relating to all matters considered by the board. The files provide background information for actions taken by the board and document follow-up activities. The earliest files, 1875-1914, are arranged chronologically. Except for the State Industrial Commission files, the records from 1915 to 1927 are not extant. Within overlapping periods of time, each of the six sets of files dating from 1928 is arranged alphabetically by the name of the government agency, project, topic, individual, or company. The six time spans include 1928–1951, 1946–1964, 1943–1964, 1935–1971, 1959–1974, and 1965–1975. Only Penn Central Court Orders date beyond 1975. Except for 1965–1975, the alphabetical scheme is based on the full name of the file heading. Thus, for example, a state agency title beginning with the word department or state is filed under the letter D or S.

(Historic Sites Survey) 1979–1981
Reports prepared by state agencies, describing state-owned properties which possess historical or architectural significance. The surveys were conducted in accordance with a preservation policy adopted by the board on January 20, 1978. The reports identify structures and sites, describe their physical condition and current uses, and recommend actions for preservation or disposition. Arranged alphabetically by state agency name.

(Leases) 1940–1971
Copies of leases, cancellation notices, and plats relating to private property rented by individuals, companies, and state agencies. Most of the leases have expired. Arranged alphabetically by state agency name.

(Letterbook) 1904–1914
Copies of correspondence and petitions. The records for 1910–1914 pertain only to oyster and fish laws. Arranged chronologically.

(Meeting File) 1966–1972
Backup material for matters considered at each meeting. Each file includes an agenda, letters of request to the board, and copies of letters notifying affected parties of actions taken by the board. Some files contain reports, maps, and plans. Arranged chronologically by meeting date and sometimes by agenda number.

(Minutes) 1851–1958
Recorded copy of minutes of the meetings of the Commissioners of Public Works, 1851–1865, and the Board of Public Works, 1865–1958, summarizing all transactions. Arranged chronologically by date of meeting. The Hall of Records has the original volumes through October 4, 1905, and microfilm copies of the later volumes which remain with the board. For indexes, see (Minutes, Index).

(Minutes) 1906–1912
Minutes of the meetings of the State Tobacco Warehouse Commission established to remodel and equip warehouses in Baltimore City and to purchase land in the city and erect a warehouse on the site. The minutes were filed as a report to the board. Arranged chronologically by meeting date.

(Minutes, Copies) 1958–1978
Typescript copies of minutes of the board meetings, summarizing all transactions. Arranged chronologically by date of meeting. Some documents are missing. Typescripts, including those after 1978, can also be found within State Publications at the Hall of Records.

(Minutes, Index) 1904–1964
Microfilm copy of card indexes to (Minutes). The general indexes, 1904–1964, contain entries for government agencies, projects, and some topics. The miscellaneous index, 1925–1964, is a subject and name index. The bond issues, loans, and emergency funds index, 1924–1964, contains entries for loan programs and other major funding activities. Each index entry gives a summary of the board's action, date, page reference, and, for 1949 to 1964, a volume reference.

(Plats and Plans) 1876–1949
Plats of land and plans of buildings, roads, and a sewerage system submitted to the board for information and documentation. Arranged chronologically. Plats and plans are also found in (General File) and (Meeting File).

(Proceedings, Tape Recordings) 1973–1983
Tape recordings of meetings of the board. Arranged chronologically by date of meeting. Transcribed proceedings are found in (Transcripts).

(Railroad Bridge Plans) 1881–1947
Maps and drawings of bridges, submitted by railroad companies for approval. The files include correspondence and petitions. Arranged chronologically.
(Special Appropriations) 1885–1896
Account book of expenditures for fuel and lights for public buildings and grounds, Maryland School for the Deaf, and repairs to public buildings. Arranged by fund.
(Title Abstracts) 1905
Abstracts of title to land owned by the State of Maryland, including plats.
(Transcripts) 1974–1978
Verbatim record of proceedings of the board, transcribed from (Proceedings, Tape Recordings). Arranged chronologically by date of meeting. A few documents are missing.

Board of Public Works

Agenda

BOARD OF PUBLIC WORKS
(Agenda).
1947, Aug. 6 - 1947, Oct. 7.
*
MdHR 40,370-1/5 5-10-1

BOARD OF PUBLIC WORKS
(Agenda).
1950, Jan. 9 - 1953, Dec. 14.
*
MdHR 40,370-6/42 5-10-1

BOARD OF PUBLIC WORKS
(Agenda).
1954, Jan. 11 - 1958, Mar. 10.
*
MdHR 40,370-43/93 5-10-1

BOARD OF PUBLIC WORKS
(Agenda).
1958, Apr. 8 - 1961, Dec. 11.
*
MdHR 40,370-94/140 5-10-1

Agreements and Contracts

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1958-1974.
State Accident Fund - Great Oaks Center.
MdHR 50,048-1 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1974.
Department of Health - Maryland Council for Higher Education.
MdHR 50,048-2 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1974.
State Commission for Higher Education Facilities - Maryland Training School for Boys.
MdHR 50,048-3 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1965-1974.
State Board of Medical Examiners - Mount Wilson State Hospital.
MdHR 50,048-4 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1974.
Municipal Court of Baltimore City - Patuxent Institution.
MdHR 50,048-5 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1974.
Commissioner of Personnel - Superintendent of Public Buildings and Grounds.
MdHR 50,048-6 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1960-1974.
Superintendent of Public Buildings and Grounds - Regional Planning Council.
MdHR 50,048-7 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1962-1972.
Registers of Wills - State Roads Commission.
MdHR 50,048-8 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967.
State Roads Commission.
MdHR 50,048-9 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1969.
State Roads Commission.
MdHR 50,048-10 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1969.
State Roads Commission, Lists of Rented Properties.
MdHR 50,048-11 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1969-1972.
State Roads Commission, Lists of Rented Properties.
MdHR 50,048-12 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1966-1973.
Rosewood State Hospital - Salisbury State College.
MdHR 50,048-13 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1970-1971.
General School Construction.
MdHR 50,048-14 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1971.
General School Construction - Springfield State Hospital.
MdHR 50,048-15 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1946-1972.
Spring Grove State Hospital - State House.
MdHR 50,048-16 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1956-1974.
State Office Complex, Annapolis - State Tax Rate.
MdHR 50,048-17 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1965-1978.
State Tax Rate - Towson State College.
MdHR 50,048-18 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1967-1974.
Maryland Traffic Safety Commission - Department of Transportation.
MdHR 50,048-19 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-20 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-21 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-22 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-23 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-24 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-25 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-26 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-27 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1974.
Department of Transportation.
MdHR 50,048-28 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-29 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-30 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-31 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-32 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-33 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-34 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.

Department of Transportation.
MdHR 50,048-35 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-36 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
1975.
Department of Transportation.
MdHR 50,048-37 C1-13-8

BOARD OF PUBLIC WORKS (Agreements and Contracts).
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