

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 overridden 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 strong 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.