

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.<sup>20</sup> 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. Blake-man.<sup>21</sup>

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.”<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup>

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*).