

THE STATE TRANSPARENCY AND ACCOUNTABILITY REFORM (STAR) COMMISSION

State Transparency and Accountability Reform (STAR) Commission Meeting February 15, 2021

10:00 AM

Held via Zoom and Live Streamed on

www.governor.maryland.gov/star-commission

Minutes

Chairman of the committee Andy Serafini begins the meeting at 10:07 AM

Chairman Serafini takes roll

- Secretary David Brinkley (Dept. of Budget and Management) is present
- Rhonda Ray (Managing Director, Dept. of Commerce) is present
- Michael Harrison (Policy Director, Dept. of Labor) is present
- Secretary Jeannie Haddaway-Riccio (Dept. of Natural Resources) is present
- Bobbie James (Senior Advisor, Maryland Dept. of the Environment) is present
- Commissioner Kathleen Birrane (Insurance Commissioner, Maryland Insurance Administration) is present
- Delegate Marc Korman (Speaker of the House) is present
- Senator Brian Feldman (President of the Senate) is present
- Delegate Kathy Szeliga (Minority Whip, House Republican Caucus) is present
- Senator Addie Eckardt (Senate Republican Caucus) does not respond, but does join the meeting
- John Williams (CEO, Jamison Door; Univ. of Maryland Medical System, Conflict of Interest Subcommittee Chair, Member of Audit and Compliance Committee, Ethics) is present
- Karen Syrylo (Maryland CPA Legislative Committee Member, Financial) is present
- Dr. Linda L. Singh (PMP, PCC, Major General (retired), Public) is present

Chairman Serafini thanks Delegate Barron and Senator Lam for serving as special guest speakers today. Del. Barron and Sen. Lam provide a presentation on their findings related to their findings regarding the Maryland Environmental Service (MES) as the co-chairs of the Joint Committee on Fair Practices and State Personnel Oversight.

Del. Barron speaks first.

- He explains that at this point he does not have a formal presentation but he thinks we can make a few preliminary observations that should apply to MES and independent agencies across the board in 4 areas
 - Appointments process - seems that this process is loose and not up to public expectations
 - Agency governance - a very important topic and one in which, just by statutory construction, the governance doesn't live up to best practices, leans into structure that is not independent and has a lack of best processes in terms of how management and the board go about day to day)
 - Procurement - when good appointments are not made then it is easy for abuse to happen
 - Oversight - legislative oversight should be the same for MES and any other agencies
- Oversight from the executive branches is clearly missing. There is nothing formal that provides oversight or accountability of agencies besides possible and occasional invitations to cabinet meetings.
- He continues to explain that legislation has been introduced to try to address these issues.

Senator Lam speaks next.

- He notes that Del. Barron provided a good overview of reform and that he believes other topics that directly have to do with MES include:
 - Board members whose terms have expired but are able to continue on the board by default if they are not replaced - this blurs the structure of good governance
 - There should also be a better look at whether too much authority is given to chairs when they are also executive members.
 - Should boards have their own resources to self assess and decide if there are skilled professionals that they don't have and need to hire?
 - This can become a problematic area because boards may not be able to pick these people directors would be allocated too much power. If an agency board comes up with appointees then provides these candidates to the governor then this may be more appropriate.
- There is also a need for significantly more internal controls over auditing.
- Agencies have unique abilities from the state so we need to readjust the balance of their power because at the end of the day these agencies respond to their boards.

Del. Korman asks if it would make sense to have the executive director able to appoint members of the board?

- Del. Barron says that he can't think of a compelling reason why that would ever be necessary

- Sen. Lam also says that general good board governance practice says that this shouldn't happen because it gives the board director too much power
- Sen. Eckardt notes that the board will often make recommendations for these positions

Del. Korman asks how do we find the right balance with procurement, and is the concept of balance the same in every agency?

- Sen. Lam says that in terms of purchasing then that is maybe when an inspector general would be useful. We also have to ask whether these agencies are competing with the private sector and, thus, feel as though they are at a disadvantage. Del. Barron notes that procurement standards need to be consistent with the rest of the government or need to be significantly more robust. Chairman Serafini notes that these agencies should be asked if they should even continue to even exist as quasi-state agencies.

Chairman Serafini thanks Del. Barron and Sen. Lam and notes that he may have follow-up questions for them.

Chairman Serafini notes that the summary of the two MES bills and hearings will be sent out to the commission members. He notes that public outcry has already occurred and it's very possible that the committee will address issues beyond MES. However, he also notes that the commission must not get too restrictive and ruin good agencies - it's a great balancing act.

The commission approves minutes from their last meeting. Motion by Dr. Singh, seconded by Del. Szeliga.

Chairman Serafini begins reviewing the draft agency questionnaire.

The commission discusses the first section of the questionnaire, which focuses on general information about the agency.

- In general, agencies will be asked about their mission statement, how they were created and their history, and why they should/need to exist as quasi-state agencies
- Agencies will be asked about their strategic plans and organizational controls and what they look like
 - Birrane notes that some amount of specificity may need to be added, i.e. what internal controls specifically?
- Sen. Eckardt asks if we can include a question asking whether the agency's mission/vision is consistent with whatever legislation has driven its existence in order to ensure that agencies are consistent with their authorizing statutes
 - Syrylo suggests that the commission extend this question by asking for examples of specific activities that fulfill authorizing statutes

- Sen. Feldman notes that no agency would ever say that their activities are inconsistent, they are going to create the appearance of consistency
- Chairman Serafini notes that this has been an existing issue with other agencies, such as the Governor's Office for Children - he says that it's good to go back and read the mission as well as audits and Department of Legislative Services (DLS) reports
- James notes that the commission will need to determine how agencies will quantify fulfilling their mission statements
- Chairman Serafini moves to Question 1E which focuses on internal controls processes and notes that the committee will want to expand on its inquiries regarding internal processes
- Discussion continues on questions in section one.
- The commission stops to discuss Question 1M, which relates to use of counsel.
 - Sen. Feldman notes that some agencies may have one person handling all matters. Are assistant attorney generals (AAG) embedded in the agency, do they have an office at the agency, how many are embedded within the agency?
 - James uses her experience as an AAG at MES, and states that AAGs at a quasi-governmental unit handles all of the legal matters.
 - Birrane states that there is also the authority for the AAGs to work with outside counsel.
 - Ray notes that the commission needs to be aware that some of these agencies are so small that they do not have their own AAGs. Commerce has several AAGs but each one is generally also assigned to each of the smaller agencies, such as the Maryland Clean Energy Center. They borrow from other agencies.
 - Chairman Serafini notes that even if an agency is small, it should be using some kind of counsel even if that requires external assistance

The commission moves to questions in section two, which focuses on financials

- Syrylo notes that the commission should identify whether or not agencies engage in external audits. She notes that the commission should include financial statements consistent with Generally Accepted Accounting Principles (GAAP).
- Birrane asks what parties are tasked with paying attention to the compliance function/how do agencies monitor compliance with the rules, laws, internals that they are responsible for?
 - Williams notes that audit statements will indicate conformity with whatever standards exist - that will be in the opinion. In terms of compliance, it would be based on the materiality of noncompliance, i.e. if there were legal issues then you would provide for the possible settlement costs. There is an examination of internal controls by external auditors - all of this is part of the audit function.

- Birrane notes that when she was on the UMMS board with Williams that they set up an internal compliance structure that created a chief compliance officer position that would be accountable to the board. May want to ask these entities how they satisfy the element of compliance outside of the financial lense.
- Chairman Serafini notes that there are governance and accountability questions later in the questionnaire.
- Syrylo notes that she is interested in audits that may include exceptions and how management handles and cures those exceptions.
- Chairman Serafini notes the importance of an agency's response to the audits.

The commission reviews and discusses section 3 which focuses on board governance.

- Birrane notes that the commission should acquire more details on agency structure, charters, committee structure, by-laws, etc.
- Del. Korman details the importance of diversity policies, and provided MES as an example.
- Sec. Brinkley notes that the commission should ask when the diversity program was updated and when training last occurred.
- Del. Korman mentions including a question on term limits.

The commission reviews and discusses section 4 which focuses on compensation and performance

- Chairman Serafini has questions related to deferred compensation added.
- Del. Szeliga emphasizes that the commission will need to make sure that agencies know that there are no compensation benefits that are unnecessary to disclose.

The commission reviews and discusses section 5 which relates to accountability.

- Ray mentions that Commerce has a records retention policy, and recommends a question related to an agency's policies.
- Del. Szeliga asks if we should ask questions related to charitable, community benefit, and/or political contributions. Question is added to the financial section of the questionnaire. Sen. Feldman mentions that the question should also mention how conflicts of interest or the appearance of conflicts of interest are mitigated.

Del. Korman and Chairman Serafini discuss the terminology and definition related to quasi-public agencies, independent agencies, and how an agency should not be able to hide behind a definition or term.

Chairman Serafini says that the questionnaire will be sent out to the committee members and they will be given a week to add questions or comments.

Sen. Eckardt notes that many not-for-profit organizations are created through statute may qualify as agencies that the commission may examine. Chairman Serafini says that the commission must make sure that it does not go too far outside of its executive order and reiterates that for now, it will examine the assigned agencies only. Sec. Brinkley suggests use of a potential short form.

Sen. Feldman asks who will be signing off on the questionnaires. Chairman Serafini says that it will likely be agency by agency. Syrylo suggests that signatures are collected from both the chairman of board and the internal executive director. Gen. Singh agrees that both should sign and be accountable for the responses.

Chairman Serafini asks for any more thoughts, comments or questions.

Motion to adjourn by Del. Szeliga, seconded by Sen. Eckardt. Meeting adjourned at 11:55 AM.

Commission Members

Andrew Serafini, Commission Chair, Retired Senator; President, Serafini Financial Services, Public

David Brinkley, Secretary, DBM

Rhonda Ray, Managing Director, Commerce

Michael Harrison, Policy Director, Labor

Jeannie Haddaway-Riccio, Secretary, DNR

Bobbie James, Senior Advisor, MDE

Kathleen Birrane, Insurance Commissioner, MIA

Marc Korman, Delegate, Speaker of the House

Brian Feldman, Senator, President of the Senate

Kathy Szeliga, Delegate, Minority Whip, House Republican Caucus

Addie Eckardt, Senator, Senate Republican Caucus

John Williams, CEO, Jamison Door; UMMS, Conflict of Interest Subcommittee Chair, Member of Audit and Compliance Committee, Ethics

Karen Syrylo, MD CPA Legislative Committee Member, Financial

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