

# WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

## REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION 2009

### I. INTRODUCTION

The West Virginia Commission on Uniform State Laws submits this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code, § 29-1A-4. Since the establishment of the West Virginia Commission on Uniform State Laws, its members have regularly and actively participated in the Uniform Law Commission (ULC) as required by Section 29-1A-4 of the West Virginia Code. The ULC was formerly known as the “National Conference of Commissioners on Uniform State Laws” and frequently referred to as the “National Conference” and “NCCUSL.” From the Uniform and Model Acts promulgated by the ULC, the West Virginia Commissioners have selected those which they think would be most immediately beneficial to the State of West Virginia and have worked with the state Legislature for their passage.

### II. HISTORY OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of Commissioners “to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.” In that same year, the American Bar Association adopted a resolution recommending that each state provide for Commissioners to confer with the Commissioners of other states on the subject of uniformity of legislation on certain subjects. In August of 1892, the first National Conference of Commissioners on Uniform State Laws convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association.

West Virginia joined the National Conference in 1909, 100 years ago. By 1912, every state was participating. In each year of service, the National Conference has steadily increased its contribution to state law. The National Conference has attracted some of the best of the profession. In 1912, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Justices of the Supreme Court of the United States (Louis Brandeis, Wiley Rutledge, and William Rehnquist) have been members. Legal scholars have served in large numbers. Examples are Professors Wigmore, Williston, Pound, and Bogart. This distinguished body has guaranteed that the projects of the National Conference are of the highest quality and are enormously influential upon the process of the law.

As it has developed in its 117 years, the National Conference, now called the Uniform Law Commission, is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

### **III. THE OPERATION OF THE NATIONAL CONFERENCE**

The ULC is convened as a body once a year. It meets for a period of eight days, usually in late July or early August. In the interim period between the annual meetings, drafting committees composed of commissioners meet to supply the working drafts which are considered at the annual meeting. The various drafts are accessible on the Internet. The address is [www.nccusl.org](http://www.nccusl.org). At each annual meeting, the latest drafts of the drafting committees are read and debated. Normally, each Act is considered over a minimum period of two years. No Act becomes officially recognized as a Uniform Act until the ULC is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the state delegations, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, composed of the officers, certain ex-officio members, and members appointed by the President of the ULC. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee assists the State commissioners in their work with their state legislatures.

A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the ULC. The total staff numbers only nine people.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. The Uniform Commercial Code is a continuing joint project of the ULC and the American Law Institute. Liaison and activities may be conducted with other associations as interests and activities necessitate.

### **IV. ACTIVITIES OF THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS**

#### **A. Annual Meeting of the Commission**

The West Virginia Commissioners are Richard E. Ford of Lewisburg, Judge Frederick P. Stamp, Jr., of Wheeling and Vincent P. Cardi of Morgantown who succeeded John L. McClagherty of Charleston. Richard Ford is Chairperson of the West Virginia Commission and Frederick Stamp, Jr., is Secretary. The Commissioners met in July and in August by phone and after some discussion, decided to introduce the

following Uniform Acts for eventual approval by the West Virginia Legislature at its 2009 session.

1. Uniform Adult Guardianship and Protective Proceedings Act
2. Uniform Trust Code
3. 2008 Amendments to the Uniform Principal and Income Act
4. Uniform Limited Liability Company Act
5. Uniform Emergency Volunteer Health Practitioners Act

The Commissioners also discussed the desirability of seeking passage of the Revised Uniform Limited Liability Company Act.

The final decision was to be left to Commissioner Cardi after his discussions with members and counsel to the West Virginia Joint Legislative Commission on Interstate Cooperation, Delegates and Senators serving on the Joint Commission, and other citizens and groups who would naturally have an interest.

#### **B. Uniform Law Commission Offices Held by Commissioners from West Virginia and Committee Memberships**

Judge Stamp was until recently a Trustee of the Uniform Law Foundation.

Richard Ford is a member of the Legislative Council and is Regional Chairman for West Virginia, Virginia, the District of Columbia, Maryland, and North Carolina. He has also served for two years on the Executive Committee and has served for two years as Secretary of the Uniform Law Commission. Vincent Cardi is the Legislative Liaison Member for West Virginia.

Former Commissioner John L. McClaugherty served two years as Chairman of the Executive Committee and served two years as President of the ULC, an honor for lawyers second only to the Presidency of the American Bar Association.

The commissioners from West Virginia serve on several committees of the ULC. Richard Ford serves on the Committee on Review of Conference Act and the Committee on Membership and Attendance. Judge Stamp was the Chairperson of the Study Committee on Conflicts of Laws-Limitations Act, has served on the Scope and Program Committee and the Drafting Committee for the Correction or Clarification of Defamation Act. He presently serves on the Committee on Review of Conference Acts and the drafting committees for the Uniform Regulation of Charities Act and the Uniform Athlete Agents Act.

Vincent Cardi served on the Study Committee for Regulation of Medico-Legal Death Investigations and on the Study Committee on Notice and Repair of Construction Defects. He is presently a member of the Drafting Committee on a Certificate of Title Act for Boats.

### **C. Work of the West Virginia Commissioners**

The tasks of the three commissioners, among other duties that arise as their Conference work demands, are to:

- (1) Meet at least once every two years as required by § 29-1A-3 of the West Virginia Code.
- (2) Participate as members of the Uniform Laws Commission as required by § 29-1A-4 in drafting Uniform and Model State Acts and other functions of the ULC.
- (3) Work with the West Virginia Legislature's Joint Legislative Commission on Interstate Cooperation by
  - a. reporting on the work of the ULC,
  - b. recommending to this Joint Legislative Commission Uniform and Model Acts produced by the ULC that the West Virginia Commissioners think the Commission should introduce in the Legislature for enactment, and
  - c. working with this Joint Legislative Commission in advising and assisting the Commission in considering these Uniform and Model Acts.
- (4) Testify on the Uniform and Model Acts that have been introduced by the Joint Legislative Commission (or by other legislative committees) before the Judiciary Committee or other committees that have taken up these acts when needed, and otherwise assist the legislature in gathering information on and understanding these acts.
- (5) Make this annual report about the activities of the West Virginia Commission on Uniform State Laws to the Legislature as called for under § 29-1A-4 of the statute which creates the Commission.

### **V. THE WEST VIRGINIA COMMISSIONERS AND THE ANNUAL CONFERENCE OF THE UNIFORM LAW COMMISSION**

Commissioners Ford and Stamp attended the 117th Annual Conference of the Uniform Law Commission in July of 2008, where they worked with other commissioners considering Uniform and Model Acts being presented to the Conference by various committees of state commissioners who have been working on the particular acts. At the meeting, the work of the Conference focused on the following:

- (1) discussing areas of social, commercial, and legal concerns which appear to be ripe for new state legislation, and deciding whether to appoint committees to study and make recommendations as to whether new state statutes should be drafted to address these problem areas;
- (2) deliberating on presentations from existing study committees as to whether a permanent drafting committee should be appointed to actually draft Acts on topics which have been studied over the last several years;

- (3) examining line-by-line preliminary drafts of Acts produced by existing drafting committees on various problems, and debating the policy implications of these drafts, the language of the drafts, and other matters surrounding these works in progress; and
- (4) participating in line-by-line readings of final drafts which are being presented to the conference for approval by the drafting committees.

Once the commissioners approved the final drafts they sent the resulting Uniform and Model Acts to the American Bar Association for its review.

The leadership of the ULC recommended to the commissioners attending the conference a list of “targeted acts,” which are Uniform and Model Acts which they think are particularly ripe for presentation to state legislatures.

Throughout the conference, special conference committees and subcommittees met regularly during the morning, day, and evenings on particular tasks involving conference business.

Throughout the year, committees of commissioners met, and are continuing to meet, to study problem areas and to draft Model Acts.

#### **A. Creation of New Study Committees**

At this year’s conference and at the winter meeting of the Executive Committee, five new study committees were appointed to consider subjects for possible future drafting. These include:

- (1) **Study Committee on Regulation of Financial Institutions and Payment Systems**  
This committee will monitor developments at the federal level, particularly with respect to the Federal Reserve Board, Treasury Department, and Congress, concerning the regulation of financial institutions and payment systems, represent the Uniform Law Commission before those entities, present the advantages of maintaining a balance of state and federal regulation in these areas, and make appropriate recommendations concerning possible ULC, or joint ULC/ALI, projects in these areas.
- (2) **Study Committee on Mental Health Advance Directives**  
Mental health advance directives are a special type of advance directive often used by persons who have been diagnosed with serious mental disorders. This committee will investigate the need for and feasibility of drafting and enacting uniform state legislation concerning the use and regulation of mental health advance directives.

- (3) **Study Committee on Model Tribal Legislation Concerning Collateralization of Interests in Real Property on Tribal Lands**  
This committee will investigate the need for and feasibility of drafting model tribal legislation that would enhance the ability to collateralize interests in real property on tribal lands.
- (4) **Study Committee on Model Tribal Legislation with respect to Child Custody and Domestic Violence Issues**  
This committee, with the advice of the Joint Editorial Board on Family Law, will investigate the need for and feasibility of drafting model tribal legislation concerning child custody and domestic violence issues affecting American Indians.
- (5) **Study Committee on Military Services and Overseas Civilian Absentee Voters Act**  
This committee will investigate the need for and feasibility of drafting and enacting uniform state legislation that would simplify the process of absentee voting for United States military and overseas civilians by making the process more uniform, convenient, secure and efficient.

#### **B. Creation of New Drafting Committees**

Drafting committees composed of commissioners, with participation from observers, advisors and reporter-drafters, have been meeting and will meet throughout the year. Tentative drafts of the laws are not submitted to the entire Conference until they have received extensive committee consideration. Proposed Acts are subjected to rigorous examination and debate in at least two annual meetings before they become eligible for designation as Conference products.

This year two new drafting committees were created to begin working on new Acts. These are:

- (1) **Drafting Committee on Certificate of Title for Boats**  
This committee will draft an act establishing a certificate of title system for boats. Many states do not have certificate of title laws governing watercraft, and those that do have considerable differences in terms. The committee will coordinate its work with the United States Coast Guard and developments concerning the Coast Guard's vessel identification and documentation systems.
- (2) **Joint Review Committee on UCC Article 9**  
This joint ALI/ULC committee will draft specific revisions of UCC Article 9 to address specific issues that a study committee has already identified as needing statutory revision. The issues that the committee will

address are those as to which ambiguities have been discovered in existing statutory language, where there have been substantial problems in practice in applying current statutory provisions, or as to which there have been significant judicial decisions or non-uniform amendments that suggest the need to consider statutory revisions.

### **C. Acts Reviewed and Debated at the Conference**

Commissioners Ford and Stamp spent six days at the annual meeting with the commissioners from other states discussing the following evolving acts, and where drafts have been produced, reading and vigorously debating them for possible final consideration in the next few years:

- (1) Uniform Act on the Collateral Consequences of Conviction**  
This committee is drafting a statute addressing the various penalties and disqualifications that individuals face incidental to criminal sentencing, including disqualification from voting, prohibitions from running for office, exclusion from certain types of employment, etc. The act is intended to be narrow in scope, applying only to the procedures surrounding collateral sanctions, not defining or limiting what those sanctions are.
- (2) Record Owners of Business Act**  
This committee will draft an act to conform uniform entity laws, including the Uniform Partnership Act (1997), Uniform Limited Partnership Act (2001), Uniform Limited Liability Act (2006) and the Uniform Unincorporated Nonprofit Association Act (1996), to address the availability of information regarding the owners of entities established under state law. The act would help address some national security concerns relating to companies operating for the purpose of organized crime, terrorist financing, securities fraud, tax evasion and other misconduct, while at the same time balancing important privacy concerns.
- (3) Collaborative Law Act**  
This committee will draft an act on collaborative law, a new kind of alternative dispute resolution framework used in many states today, particularly in a family law context, i.e., divorce, custody, and support proceedings. The core idea is that lawyers (and parties) to a dispute agree in advance that the lawyers will withdraw if the dispute goes to trial. The committee will also consider whether the act should be limited to family law cases or expanded to other areas of the law such as estate planning.

- (4) **Statutory Trust Entity Act**  
The business trust format – often used in mutual funds, ERISA pension funds, and various types of regulatory compliance trusts – is increasingly used as an alternative to other business entities such as a corporation and limited partnership. Business trusts are special purpose vehicles, the closest equivalent being limited partnerships. Although there are few business trusts compared to other types of business forms, trillions of dollars of assets are invested in this business format. This committee is drafting an act that will apply to business trusts and other analogous statutory trusts. It will not apply to the kind of trusts used in estate planning.
- (5) **Revised Model State Administrative Procedures Act**  
This committee is revising the 1980 Model State Administrative Procedures Act, which provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. A revision is necessary to update the act to recognize electronic communications and other state procedural innovations since the act was originally promulgated.
- (6) **Real Property Transfer on Death Act**  
This committee will draft an act that will permit real property to be transferred outside of probate upon death by beneficiary designation, similar to current beneficiary designations now used on securities accounts. At least eight states now permit this kind of real estate transfer on death.
- (7) **Business Organizations Act**  
The purpose of this committee is to draft common provisions of business organization law such as definitions; the mechanics of filings; names of entities, registered agents and registered offices; qualification of foreign entities; and administrative powers of the Secretary of State; and incorporate Model Entity Transactions Act provisions on merger, interest exchanges, conversions, domestications and divisions.
- (8) **Protection of Genetic Information in Employment and Insurance Act**  
This committee will draft uniform or model legislation on the misuse of genetic information in the context of employment and health insurance.



## VI. NEW ACTS APPROVED BY NCCUSL AND TARGETED ACTS

### A. Approval of New Acts and Amendments

At the 2008 meeting, the Commissioners approved the following three new Acts and Amendments to four Acts for presentation to state legislatures.

- (1) **Amendments to Uniform Interstate Family Support Act**  
The Uniform Interstate Family Support Act, the law in every state, was amended to modify the current version of UIFSA's international provisions to comport with the obligations of the United States under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was signed by the President in 2008. The amendments give greater enforcement of U.S. orders abroad; also, foreign orders will be recognized and enforced like orders of other American states.
- (2) **Revised Uniform Unincorporated Nonprofit Association Act**  
The Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA) is the product of a joint project between the ULC, the Uniform Law Conference of Canada and the Mexican Center on Uniform Laws. The RUUNAA, a revision of the UUNAA of 1996, governs all unincorporated nonprofit associations (UNAs) that are formed or operate in a state that adopts the act. There are hundreds of thousands of UNAs in the United States, including educational, scientific and literary clubs, sporting organizations, political organizations, neighborhood associations and the like. The RUUNAA provides a basic legal framework for the operation of UNAs. The drafting committee for this project developed a "statement of principles" that each participating country has used for the basis for its UNA statute. The RUUNAA is the American version of this harmonization project.
- (3) **Amendments to Uniform Common Interest Ownership Act**  
The Uniform Common Interest Ownership Act (UCIOA) provides provisions for creating, managing, and terminating condominium, planned community and other types of real estate cooperatives. The 2008 amendments update the 1994 UCIOA to address a range of significant controversies between unit owner associations and individual members of those associations, enhancing the existing protections for unit owners.
- (4) **Uniform Common Interest Owners Bill of Rights Act**  
A Uniform Common Interest Owners Bill of Rights Act was drafted along with the new amendments to UCOIA, and is available as a separate free-standing act. This act addresses many "association versus unit owner" issues touched on in UCIOA.

- (5) **Uniform Unsworn Foreign Declarations Act**  
The Uniform Unsworn Foreign Declarations Act will permit, in state court proceedings, unsworn declarations under penalty of perjury to be executed by witnesses located outside the United States in lieu of affidavits, verifications, or other sworn court filings. Obtaining an affidavit abroad can be a costly and time-consuming process, making a uniform state law on this subject extremely useful in transnational litigation.
- (6) **Amendments to Uniform Probate Code**  
The Uniform Probate Code (UPC), which is fully adopted in 18 states (and partially adopted as various stand-alone acts in many others) provides an integrated statutory system for all sorts of probate and estate law matters. The UPC, along with its constituent stand-alone acts, has been frequently updated since its inception in 1969. The 2008 amendments to the UPC are designed to address four key issues. First, several sections having to do with cost-of-living adjustments have been updated for the first time since 1990. Second, definitions have been added to make the UPC consistent with the use of electronic signatures and records, and to allow for the option of notarized wills (as an alternative to attestation by two witnesses). Third, Article II of the UPC dealing with intestate succession has been reorganized and expanded to extend intestate inheritance rights to a broader group of potential heirs based on the existence of a “parent-child relationship” as defined therein. This last change significantly modernizes the UPC’s treatment of non-marital children (and children of new forms of marriage), adoptive children, and children of assisted reproduction.
- (7) **Amendments to Uniform Principal and Income Act**  
The 2008 Amendments to the Uniform Principal and Income Act address important tax matters. The changes bring the UPIA into compliance with IRS comments regarding allocation of IRA distributions in Section 409. Additionally, the changes clarify the formula for calculating how much the trust needs to distribute and how much it can use to pay taxes.

## **B. Targeted Acts**

The Executive Committee of the ULC listed four Uniform and Model Acts as “Targeted Acts,” Acts that they think are especially timely for state adoption this year.

Following is the list of 2008-2009 Targeted Acts. By July 2008, West Virginia had already adopted one of these Acts.

- (1) **Uniform Interstate Family Support Act 2008 Amendments**  
The Uniform Interstate Family Support Act, the law in every state, was amended to modify the current version of UIFSA’s international provisions to comport with the obligations of the United States under the

Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was signed by the President in 2008. The amendments give greater enforcement of U.S. orders abroad; also, foreign orders will be recognized and enforced like orders of other American states.

**(2) Uniform Principal and Income Act 2008 Amendments**

The 2008 Amendments to the Uniform Principal and Income Act address important tax matters. The changes bring the UPIA into compliance with IRS comments regarding allocation of IRA distributions in Section 409. Additionally, the changes clarify the formula for calculating how much the trust needs to distribute and how much it can use to pay taxes.

**(3) Uniform Debt-Management Services Act**

The consumer debt management industry has taken many forms over the time since its development in the 1950's. The industry has had a checkered past, with frequent accusations of abuse. The interest in debt counseling and management, however, has been dramatically escalated by the bankruptcy reform legislation passed by Congress in 2005. It mandates counseling by a private agency before an individual may enter into bankruptcy. The Uniform Debt-Management Services Act regulates debt-management companies by requiring them to register with the state. To obtain a certificate of registration, a provider must supply information about itself, must obtain insurance against employee dishonesty, and must post a surety bond to safeguard any money that it receives from individuals for payment of creditors. The Act also regulates interaction with consumers, including steps to be taken before entering an agreement with an individual, the content of an agreement (including limitations on the fees that may be charged), and provisions concerning the performance and termination of agreements. Finally, the Act provides for enforcement both by a public authority and by private individuals, including rule-making power on the part of the administrator and recovery of minimum, actual, and, in appropriate cases, punitive damages in private enforcement actions.

**(4) Uniform International Wills Act**

The Uniform International Wills Act implements an international convention calling for all countries and states to adopt a uniform formality for executing wills that, if observed, should assure the validity of the will no matter where the testator resides or owns property at the time of death.

## VII. 2009 RECOMMENDATIONS BY THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS AND WEST VIRGINIA LEGISLATIVE ACTION

The West Virginia Commissioners met in July and in September by phone and after some discussion, decided to introduce the following Uniform Acts for eventual approval by the West Virginia Legislature at its 2009 session.

1. 2008 Amendments to the Uniform Principal and income Act
2. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
3. Uniform Emergency Volunteer Health Practitioners Act
4. Uniform Trust Code
5. Uniform Limited Liability Company Act

The Probate Committee of the West Virginia State Bar had been examining the Uniform Trust Code for several years. By late fall, it was clear that the Trust Code was not yet ready for introduction so it was not introduced to the Joint Legislative Commission on Interstate Cooperation. Commissioner Cardi arranged for one of the Reporters of the Uniform Limited Liability Company Act to present the Act to a group of business lawyers at a 2008 fall continuing legal education program at the West Virginia University College of Law. Attorneys at this session found the new Act promising, but stated it should be studied further by state bar committee members before introducing it as legislation.

At the September and November 2008 interim meetings of the West Virginia Joint Legislative Commission on Interstate Cooperation in Charleston, Commissioner Vincent Cardi reported on the activities of the July National Conference meeting among other matters and advised the Committee on the Acts that the West Virginia Commission would be recommending for enactment in the 2009 session. At these interim meetings of the Legislative Commission, Commissioner Cardi presented the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and the Amendments to the Principal and Income Act and urged the commissioners to approve the introduction of the Act to the 2008 legislature for enactment.

Commissioner Cardi attended a February meeting of the House Judiciary Committee where the Uniform Amendments to the Principal and Income Act were debated.

In the 2009 Legislative Session, the West Virginia Legislature considered the following two Uniform Acts recommended by the Commissioners:

- (1) **2008 Amendments to the Uniform Principal and Income Act**  
The Uniform Law Commission, in July 2008, approved amendments to the Uniform Principal and Income Act that update the act to reflect current policy of the Internal Revenue Service (IRS) and clarify technical language regarding withholdings. Section 409 of the Act has been changed to satisfy

a 2006 IRS ruling regarding marital deductions. The new language comports with the ruling and the underlying tax policies of the IRS. Further, the 2008 amendments include a change to Section 505, which addresses the amount of money which must be withheld from a distribution to pay the tax on the undistributed income. The amendment clarifies the section and removes any ambiguity that could lead to litigation.

**(2) Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

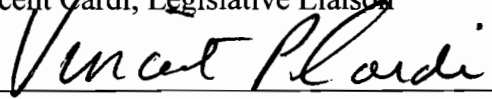
This act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Because there are more than fifty guardianship systems in the United States, problems of determining jurisdiction are frequent. This act provides an effective mechanism for resolving multi-state jurisdictional disputes. It contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The objective is that only one state will have jurisdiction at any one time.

**VIII. DISTRIBUTION OF REPORT**

As recommended in the Performance Review Report pertaining to the Commission on Uniform State Laws, a copy of this report to the Legislature is being forwarded to the West Virginia State Bar, the West Virginia Bar Association, the Mountain State Bar Association, the West Virginia Trial Lawyers Association, and the Defense Trial Counsel of West Virginia.

Respectfully submitted this 17th day of April 2009.

Richard E. Ford, Chairman  
Frederick P. Stamp, Jr., Secretary  
Vincent Cardi, Legislative Liaison

  
\_\_\_\_\_  
for the Commissioners