

**Preliminary Performance Review**

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**Commission on  
Uniform State Laws**

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**The West Virginia Commission on Uniform  
State Laws Works with the National  
Conference of Commissioners on Uniform  
State Laws to Provide a Valuable Service  
to the Citizens of West Virginia**

**Public Awareness of the Commission  
on Uniform State Laws Could be Improved**



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John Sylvia  
Director

January 11, 2004

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Commission on Uniform State Laws*, which will be presented to the Joint Committee on Government Operations on Sunday, January 11, 2004. The issues covered herein are "The West Virginia Commission on Uniform State Laws Works with the National Conference of Commissioners on Uniform State Laws to Provide a Valuable Service to the Citizens of West Virginia;" and Public Awareness of the Commission on Uniform State Laws Could be Improved."

We transmitted a draft copy of the report to the Commission on Uniform State Laws on December 23, 2003. We held an exit conference via telephone with the Commission on December 29, 2003. We received the agency response on December 30, 2003.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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The West Virginia Commission on Uniform State Laws was created under the 1931 acts of the Legislature to promote uniformity in state laws. It is composed of three commissioners appointed by the Governor. The Commission participates in the National Conference of Commissioners on Uniform State Laws where it works closely with commissioners from all 50 states as well as the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. The National Conference was organized in 1892 to promote uniformity by voluntary action of each state government and is now composed of more than 300 lawyers, judges and law professors. Collectively, the Conference has developed many uniform acts which have resulted in the passage of numerous uniform laws throughout the United States and its territorial possessions. Upon recommendation of the Conference, the Commission returns to its State Legislature with recommendations for uniform laws. The cost of the operation of the Commission to the state is minimal and is far outweighed by the benefits derived from its proceedings

## **Issue 1: The West Virginia Commission on Uniform State Laws Works With the National Conference of Commissioners on Uniform State Laws to Provide a Valuable Service to the Citizens of West Virginia**

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*The cost of the Commission's operation to the state is minimal.*

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The Commission develops, promulgates, and encourages the passage of statutes in West Virginia that are uniform and compatible with those of other states. Such uniform laws serve to avoid conflicts of law with other states and to preempt federal legislation in as many areas as possible thereby preserving the state's right to govern itself. The cost of the Commission's operation to the state is minimal. The state is responsible for paying the Commission's dues to the National Conference which in Fiscal Year 2003 totaled \$19,100. Members also receive expense reimbursements, but only for actual expenses incurred when participating in the National Conference's annual meeting. Members do not receive compensation for services rendered. Essentially, the expertise and time of members of the Commission is donated. Uniform laws developed and promoted by the Commission have served to simplify the legal life of businesses and individuals by promoting consistency from state to state.

## **Issue 2: Public Awareness of the Commission on Uniform State Laws Could be Improved**

The Commission has made efforts to comply with recommendations

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*More can be done to increase the public awareness and accessibility of the Commission, and to facilitate and solicit input from the public that may help the Commission carry out its duty to determine the desirability and practicability of uniform laws.*

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made in the previous performance review conducted in 1997 which recommended that the Commission take action to increase public awareness of its proceedings. The Commission now forwards copies of its annual reports to potentially interested legal entities. However, the Legislative Auditor concludes that more can be done to increase the public awareness and accessibility of the Commission, and to facilitate and solicit input from the public that may help the Commission carry out its duty to determine the desirability and practicability of uniform laws. The Commission should therefore coordinate with the Department of Administration within which it is located to expand the Department's website to include contact information for Commissioners as well as a link to the website of the National Conference whereby the public can monitor the Conference's proceedings and offer input to the Commissioners of this state.

The Legislative Auditor has also found that the terms of membership of all three Commissioners have expired as of June 2003. Members are eligible for reappointment. Action should be taken by the Governor's Office to ensure that all positions on the Commission are properly filled.

### **Recommendations:**

1. *The Legislative Auditor recommends that the Commission on Uniform State Laws be continued.*
2. *The Commission should coordinate with the Department of Administration to modify the state's website to include contact information for the State's Commissioners as well as a link to the website for the National Conference of Commissioners on Uniform State Laws.*
3. *The Governor's Office should take appropriate action to ensure that membership of the Commission is properly maintained.*



# Review Objective, Scope and Methodology

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This Preliminary Performance Review of the West Virginia Commission on Uniform State Laws located within the Department of Administration is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the *West Virginia Code*, as amended. The Commission is intended to attend the meetings of the National Conference of Commissioners on Uniform State Laws where it develops, promulgates and encourages the passage of statutes in West Virginia that are uniform and compatible with those of other states so as to avoid conflicts of law and to preempt federal legislation in as many areas as possible. The Commission counsels and confers with the West Virginia Legislature.

## Objective

The objective of this audit is to determine whether there is a need for such a commission to aid in the law making process; whether the Commission operates in a sound fiscal manner; whether the Commission is operating in a manner that is consistent with its statutory obligations; and whether there would be any discernable adverse effects if the Commission were terminated.

## Scope

The scope of this preliminary performance evaluation covers the period from the Commission's last performance review in 1997 to the present with mention of the history of the Commission and the National Conference.

## Methodology

Information compiled in this report has been acquired through commission correspondence, and interviews, with members of the Commission. Documents obtained from the Commission include: 1) Annual Reports to the Legislature from 1996 to the present; and 2) Commission Meeting Minutes from 1997 to the present. Information obtained from the National Conference includes: 1) a list of West Virginia's dues contributions to the National Conference from 1998 to the present; and 2) information from the National Conference's website [www.nccusl.org](http://www.nccusl.org) pertaining to the Conference's background, organization, history, financial support, procedures, constitution, meetings, links, etc. Information obtained from the Governor's Office includes: 1) a list of Commission members dates of appointment and membership expiration; and 2) Executive Budget information. The review further included examination of *West Virginia Code* §29-1A, Commission on

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Uniform State Laws, and §29-1B, Commission on Interstate Cooperation.  
Every aspect of this review complied with Generally Accepted Auditing  
Standards (GAGAS).

# Issue 1

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## **The West Virginia Commission on Uniform State Laws Works With the National Conference of Commissioners on Uniform State Laws to Provide a Valuable Service to the Citizens of West Virginia.**

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*As West Virginia's representative at the National Conference, the Commission on Uniform State Laws participates in drafting and debating acts as well as discerning the "desirability" and "practicability" of proposed uniform state laws.*

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The West Virginia Commission on Uniform State Laws was created under the 1931 acts of the Legislature to promote uniformity in state laws. The Commission works closely with similar commissions from all 50 states as well as the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. This assemblage is collectively known as the National Conference of Commissioners on Uniform State Laws. The Conference has developed many uniform acts which have resulted in uniform laws throughout the United States. As West Virginia's representative at the National Conference, the Commission on Uniform State Laws participates in drafting and debating acts as well as discerning the "desirability" and "practicability" of proposed uniform state laws as set forth in §29-1A-4. The Legislative Auditor has determined that the Commission on Uniform State Laws provides a valuable service to the State of West Virginia.

## **The Commission Provides a Valuable Service to the State of West Virginia**

The West Virginia Commission on Uniform State Laws develops, promulgates, and encourages the passage of statutes in West Virginia that are uniform and compatible with those of other states. Such uniform laws serve to avoid conflicts of law with other states and to preempt federal legislation in as many areas as possible thereby preserving the state's right to govern itself.

Each year West Virginia's three commissioners attend an annual meeting of the National Conference of Commissioners on Uniform State Laws where commissioners from all 50 states, and the territorial possessions of the United States meet to draft uniform laws for proposal to their respective legislatures. During the legislative interim the Commission reports to West Virginia's Commission on Interstate Cooperation (COIC). Recommendations are made to the COIC which votes on what uniform acts will be reported as bills during the legislative session. It should be noted that all acts recommended by the Commission on Uniform State Laws to the COIC can not become law until passed by the Legislature, and are subject to amendments which may affect uniformity. The Legislative Auditor finds it to be important that West Virginia participate in the National Conference and that its proceedings have served to improve the laws of this state in areas where coordination with laws in other

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states has been determined desirable.

## **The National Conference**

The National Conference of Commissioners on Uniform State Laws was organized in 1892 to promote uniformity by voluntary action of each state government. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state and United States territorial possession. In all, more than 300 lawyers, judges and law professors appointed by the State come together to draft proposals for uniform and model laws on subjects where uniformity is desirable and practicable, and to work toward their enactment in legislatures. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute.

The only fundamental requirement for the more than 300 uniform law commissioners is that they be members of the Bar. While some commissioners serve as state legislators, most are practitioners, judges, and law professors. They serve specific terms, and receive no salaries or fees for their work with the Conference. The state uniform law commissioners come together to form the National Conference for one purpose - to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. It should be emphasized that the Conference can only propose laws. No uniform law is effective until it is adopted by a state's Legislature.

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*The state uniform law commissioners come together to form the National Conference for one purpose - to study and review the law of the states to determine which areas of law should be uniform.*

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## **The Process of Creating a Uniform Law**

Members of the National Conference also serve on various committees. The process of creating a uniform law starts with the Scope and Program Committee. After review of each proposed act it reports to the Executive Committee with a determination of whether the drafting of a uniform act on the subject is desirable and feasible. If approved by the Executive Committee a drafting committee is appointed. Drafting committees meet throughout the year.

At the Conference's annual meeting, draft acts are offered for initial debate. Each act must be considered section by section, at no less than two annual meetings by all commissioners. The Conference maintains that every concept and word is analyzed by hundreds of trained eyes.

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Once the Committee as a whole approves an act it is presented for a vote by the states, each state getting one vote. Upon approval of a majority of the states present and no less than 20 states, it is officially adopted as a Uniform or Model Act and officially promulgated for consideration by state legislatures. Legislatures are urged to adopt Uniform Acts exactly as written, to preserve uniformity. Model Acts are designed to serve as guideline legislation from which states can borrow and adapt concepts and language to suit individual needs and conditions.

### **West Virginia's Representation in the National Conference Has Been Strong**

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*West Virginia's commissioners have held executive positions and represented the State well.*

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In addition to service on the West Virginia Commission on Uniform State Laws, the Commissioners serve on drafting and other committees of the National Conference. West Virginia's commissioners have held executive positions and represented the State well.

- One former commissioner who recently passed away had served as chair of the National Legislative Committee, two years as chair of the Executive Committee, and two years as President of the National Conference, an honor in the legal profession second only to that of president of the American Bar Association.
- One Commissioner has served on the Scope and Program Committee, two drafting committees, chaired a review committee, and chaired a committee of the whole during conference deliberations.
- One Commissioner has served as secretary of the National Conference, two years on the Executive Committee, is chair of the Atlantic Division of the Legislative Committee, serves on four other standing committees, and has recently been appointed to a study committee charged with researching potential genetic privacy acts. He has also served on numerous drafting committees

### **The Cost of the Commission is Minimal Compared to the Benefits Derived**

The Cost of the operation of the Commission is minimal. Members of the Commission do not receive compensation for the performance of their duties. Members are reimbursed for actual expenses incurred in their travel and participation in the National Conference. Expenses incurred in travels to interim

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drafting committee meetings are reimbursed by the National Conference. The only other expense to the State is in membership dues paid to the National Conference. In Fiscal Year 2002 the State's share of dues was \$18,200. In Fiscal Year 2003 the State's share will be \$19,100. State's dues are apportioned among states by means of an assessment based on population.

Though the State's share is small, the Conference maintains that it is able to get maximum results from a minimum budget. This is because its major asset, drafting expertise, is donated. The only compensation for commissioners is the satisfaction derived from solving important legal problems. Commissioners devote hundreds and even thousands of hours – amounting in some cases to millions of dollars worth of time to the development of uniform and model acts. The Conference further maintains that no state could afford the bills for the legal expertise that is donated to the drafting of uniform laws.

## **Conclusion**

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*The Legislative Auditor further concludes that the Commission operates in a sound fiscal manner and that the benefits derived from the proceedings of the Commission outweigh the costs of its operation.*

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The Legislative Auditor concludes that the Commission on Uniform State Laws provides a valuable service to the citizens of West Virginia and the nation as a whole by working to promote uniformity in state laws. Such uniform laws serve to simplify the legal life of businesses and individuals by promoting consistency from state to state. The Legislative Auditor further concludes that the Commission operates in a sound fiscal manner and that the benefits derived from the proceedings of the Commission outweigh the costs of its operation.

## **Recommendation**

1. *The Legislative Auditor recommends that the Commission on Uniform State Laws be continued.*

## Issue 2

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### **Public Awareness of the Commission on Uniform State Laws Could be Improved**

#### **Issue Summary**

A 1997 Preliminary Performance Review of the Commission on Uniform State Laws found that the Commission was providing a valuable service to the citizens of West Virginia, but that more could be done to increase the general public's awareness of the proceedings of the Commission and to solicit input from the various affected entities in the state as well as the general public. The Commission has taken actions to comply with this recommendation, but the Legislative Auditor recommends that additional steps be taken to facilitate further involvement of interested parties. The Commission may find such public participation to be valuable given that it is charged with determining the practicability or desirability of a uniform act. Such improvements in public visibility may require the involvement of the Department of Administration within which the Commission is located. Furthermore, the Legislative Auditor has found that the appointment of members of the Commission has not been properly maintained, and concludes that the Governor's Office should take action to ensure that members are properly appointed so that they may continue to perform their duties.

#### **The Commission Has Made Efforts to Increase the Awareness of Legal Entities**

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*The Commission now forwards copies of its annual reports 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.*

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A survey conducted by the Legislative Auditor in 1997 polled five major attorney organizations in the state and found that only two had been contacted by the Commission regarding draft acts that the National Conference was considering. Two presidents of these organizations were familiar with the State Commission and National Conference; one was only generally familiar; and two were totally unfamiliar with the West Virginia Commission or the National Conference.

In an effort to increase the awareness of such potentially interested parties, the Commission now forwards copies of its annual reports 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. Such annual reports have also since been modified to include the prior proceedings of the National Conference with summaries of the acts and amendments approved, as well as a list of any uniform acts or amendments that the State Commission plans to recommend for consideration by the West Virginia Legislature during the upcoming legislative session.

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## **Efforts Should be Made to Make the Commission More Visible to the General Public**

The uniform laws proposed by the Commission are debated by the Commission on Interstate Cooperation, the Judiciary Committees, and the Legislature as a whole. However, due to the importance of the Commission to public policy in West Virginia, efforts should be made to increase public input prior to its National meeting. The Legislative Auditor noted in 1997 that there is no process by which the Commission informs West Virginia's public of what draft acts the National Conference intends to consider for passage, and that consequently, the public is not afforded the opportunity for input prior to the drafting of uniform acts.

The Legislative Auditor has since found that resources regarding the proceedings of the Commission are available to the public if they know where to look. The National Conference of Commissioners on Uniform State Laws maintains an informative and extensive website, [www.nccusl.org](http://www.nccusl.org). On this site, users can browse information arranged by state, by act, or by committee. The website further offers information on projects under consideration, rules and procedures, meetings, forums and recent news. Furthermore, the website provides a listing of all state commissioners and contact information for executive commission members. The Legislative Auditor concludes that the West Virginia Commission should make an effort to increase the public's awareness of this resource and to make it more readily accessible.

The West Virginia Commission on Uniform State Laws is located within the Department of Administration which operates its own website through the state of West Virginia, [www.state.wv.us/admin](http://www.state.wv.us/admin). This site lists the Commission on Uniform State Laws under "boards and commissions," but no links to additional information are offered. The Legislative Auditor concludes that the Department of Administration should modify its website to include a list of active state commissioners and their contact information, as well as a link to the website maintained by the National Conference. By making such information more readily accessible, interested parties would then be afforded the opportunity to monitor the proceedings of the National Conference and its drafting committees and could contact state commissioners to offer input.

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*The Department of Administration should modify its website to include a list of active state commissioners and their contact information, as well as a link to the website maintained by the National Conference.*

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## **Commission Member's Terms Have Expired**



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*It is important that membership is properly maintained so that the actions of the Commission might be less vulnerable to legal challenges.*

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The Legislative Auditor has found that the terms of all three members of the West Virginia Commission on Uniform State Laws have expired as of June 2003. Given that the Commission is a state entity that is active in drafting, recommending, and promoting the passage of uniform state laws, it is important that membership is properly maintained so that the actions of the Commission might be less vulnerable to legal challenges. Furthermore, given that the Commission represents West Virginia at the National Level and actively participates in the creation of uniform laws for all 50 states and the territorial possessions of the United States, it is of increased importance that those sent to represent this state are acting in a capacity consistent with the West Virginia Code. Members of the Commission are eligible for reappointment. West Virginia Code §29-1A-2 states that:

*Each of said commissioners shall hold office for a term of four years, and until their successors are duly appointed, but nothing herein contained shall be construed to render a commissioner who has faithfully performed his duties ineligible for reappointment.*

Therefore, the Legislative Auditor recommends that the Governor's Office take action to assure that members of the Commission are either reappointed or that new members are appointed based on the recommendation of the Executive Council of the West Virginia Bar Association as required by West Virginia Code §29-1A-1.

## **Conclusion**

The Legislative Auditor has found that the Commission has made efforts to comply with previous performance evaluation recommendations by forwarding copies of annual reports to certain legal entities that might have interest in its proceedings. The Legislative Auditor has also determined however, that more could be done to increase public awareness of the proceedings of the Commission and the National Conference. By coordinating with the Department of Administration within which the Commission is located, modifications could be made to the State's website to include contact information for the Commissioners as well as a link to the website of the National Conference. Such increased visibility of the Commission and its proceedings could serve to solicit input from potentially affected parties thereby enhancing the work of the Commission and its ability to determine the "desirability and practicability" of uniform laws; a duty with which it is charged under West Virginia Code §29-1A-4.

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Furthermore, the Governor's Office should take action to assure that the appointment of members of the Commission is properly maintained so that it can continue to serve the citizens of this state.

**Recommendations:**

2. *The Commission should coordinate with the Department of Administration to modify the state's website to include contact information for the State's Commissioners as well as a link to the website for the National Conference of Commissioners on Uniform State Laws.*

3. *The Governor's Office should take appropriate action to ensure that membership of the Commission is properly maintained.*

# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

December 23, 2003

Richard E. Ford  
203 West Randolph St.  
Lewisburg, WV 24901

Dear Mr. Ford,

This is to transmit a draft copy of the Preliminary Performance Review of the West Virginia Commission on Uniform State Laws. This report is scheduled to be presented during the January 11-13, 2004 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We would like to schedule an exit conference on December 29<sup>th</sup> or 30<sup>th</sup> to discuss any concerns you may have with the report. This can be done over the phone if you so desire. We need your written response by noon on January 2, 2004, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, January 8 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

  
John Sylvia

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response

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## THE FORD LAW FIRM

203 WEST RANDOLPH STREET

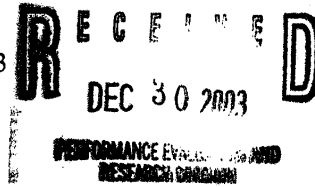
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RICHARD E. FORD  
RICHARD E. FORD, JR.

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December 29, 2003



Mr. John Sylvia, Director  
Legislative Performance Evaluation and Research Division  
W-314 Capitol Building  
Charleston, West Virginia 25305-0610

Re: *Commission on Uniform State Laws*

Dear Mr. Sylvia:

This will acknowledge receipt of your letter of December 23, 2003.

The Commission will coordinate and cooperate with the Department of Administration to modify the State web site to include contact information for the Commissioners and to link the West Virginia web site to that of the National Conference of Commissioners on Uniform State Laws.

With regard to the second recommendation, each Commissioner is willing to be reappointed.

Thank you for your report. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script that reads "Richard E. Ford".

Richard E. Ford, Chairman

REF/cem

cc: Judge Frederick P. Stamp, Jr.  
Prof. Vincent P. Cardi

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