

HOUSE BILL 710

L5

71r0557

By: **Montgomery County Delegation and Prince George's County Delegation**

Introduced and read first time: February 8, 2007

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2007

CHAPTER _____

1 AN ACT concerning

2 **Maryland-National Capital Park and Planning Commission – Service**
3 **Contracts**

4 **MC/PG 117-07**

5 FOR the purpose of ~~prohibiting the Maryland-National Capital Park and Planning~~
6 ~~Commission from soliciting a certain service contract unless the Executive~~
7 ~~Director of the Commission provides certain certification, the Commission~~
8 ~~submits a certain plan, and bargains in good faith with a certain certified~~
9 ~~representative providing that before the Maryland-National Capital Park~~
10 ~~and Planning Commission may solicit a certain service contract, the~~
11 ~~Secretary-Treasurer of the Commission must provide certain certification;~~
12 ~~prohibiting the Secretary-Treasurer from making a certain certification unless~~
13 ~~the Commission has taken certain actions; requiring the Commission to~~
14 ~~compare certain costs under certain circumstances; requiring the Commission to~~
15 ~~provide certain notice and maintain a certain plan under certain circumstances;~~
16 authorizing the certified representative of an adversely affected Commission
17 employee to submit a proposal in response to a certain solicitation; specifying
18 that noncompliance with the provisions of the Act may not invalidate certain
19 contract awards or proposed contract awards; authorizing a certified
20 representative to file ~~an action in a certain court~~ a certain appeal on behalf of a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Commission employee if the Commission fails to comply with certain provisions
 2 of this Act; authorizing an administrative hearing officer to award an employee
 3 certain damages under certain circumstances; providing that a certain award of
 4 damages shall be the sole and exclusive remedy for certain violations; providing
 5 for the application of this Act; providing for a certain remedy; defining certain
 6 terms; and generally relating to Maryland–National Capital Park and Planning
 7 Commission service contracts.

8 BY adding to

9 Article 28 – Maryland–National Capital Park and Planning Commission

10 Section 2–112.2

11 Annotated Code of Maryland

12 (2003 Replacement Volume and 2006 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article 28 – Maryland–National Capital Park and Planning Commission**

16 **2–112.2.**

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
 18 MEANINGS INDICATED.

19 (2) (I) “ADVERSELY AFFECT” MEANS:

20 ~~(I) A LOSS OF EXISTING COMMISSION EMPLOYMENT;~~

21 ~~(II) A LOSS OF BARGAINING UNIT WORK;~~

22 ~~(III) A REDUCTION IN PAY GRADE; OR~~

23 ~~(IV) A REDUCTION IN PAY OR BENEFITS.~~

24 1. THE ELIMINATION OF MORE THAN TWO
 25 EMPLOYEE POSITIONS ASSIGNED TO PERFORM BARGAINING UNIT WORK IF THE
 26 POSITIONS ARE AUTHORIZED, FULLY FUNDED, AND EITHER VACANT FOR LESS
 27 THAN 90 CALENDAR DAYS OR OCCUPIED AT THE TIME THE COMMISSION
 28 SOLICITS A SERVICE CONTRACT;

1 **2. A PERMANENT AND INVOLUNTARY REDUCTION**
2 **BELOW THE NUMBER OF HOURS FOR REGULAR FULL-TIME EMPLOYMENT FOR**
3 **MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A REGULAR**
4 **FULL-TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK WHEN**
5 **THE COMMISSION SOLICITS A SERVICE CONTRACT;**

6 **3. A PERMANENT AND INVOLUNTARY REDUCTION IN**
7 **THE PAY GRADE FOR MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A**
8 **REGULAR FULL-TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK**
9 **WHEN THE COMMISSION SOLICITS A SERVICE CONTRACT; OR**

10 **4. A PERMANENT AND INVOLUNTARY REDUCTION IN**
11 **THE BASE PAY OR FRINGE BENEFITS OTHERWISE APPLICABLE TO A JOB**
12 **CLASSIFICATION COVERING MORE THAN FIVE EMPLOYEES CURRENTLY**
13 **ASSIGNED ON A FULL-TIME BASIS TO PERFORM BARGAINING UNIT WORK WHEN**
14 **THE COMMISSION SOLICITS A SERVICE CONTRACT.**

15 **(II) “ADVERSELY AFFECT” DOES NOT INCLUDE ANY ACTION**
16 **BY THE COMMISSION TAKEN IN ACCORDANCE WITH:**

17 **1. A BONA FIDE DISCIPLINARY PROCEEDING;**

18 **2. A COLLECTIVE BARGAINING AGREEMENT THEN**
19 **APPLICABLE IN ACCORDANCE WITH § 2-112.1 OF THIS SUBTITLE; OR**

20 **3. A REALLOCATION OR REASSIGNMENT TO OTHER**
21 **BARGAINING UNIT WORK OR OTHER DUTIES THAT DOES NOT RESULT IN A**
22 **CHANGE IN JOB CLASSIFICATION OR GRADE.**

23 **(3) “BARGAINING UNIT WORK” MEANS WORK DUTIES ASSIGNED**
24 **OR ALLOCATED TO ANY POSITION OCCUPIED WITHIN THE PRECEDING 90**
25 **CALENDAR DAYS BY AN EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED**
26 **REPRESENTATIVE.**

27 **(4) “CERTIFIED REPRESENTATIVE” MEANS AN EMPLOYEE**
28 **ORGANIZATION CERTIFIED AS THE COLLECTIVE BARGAINING REPRESENTATIVE**
29 **OF COMMISSION EMPLOYEES IN ACCORDANCE WITH § 2-112.1(C) OF THIS**
30 **SUBTITLE.**

1 ~~(4) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR~~
2 ~~OF THE COMMISSION.~~

3 (5) “SECRETARY-TREASURER” MEANS THE
4 SECRETARY-TREASURER OF THE COMMISSION.

5 ~~(5)~~ (6) “SERVICE CONTRACT” MEANS A PROCUREMENT
6 CONTRACT FOR SERVICES THAT WILL BE PROVIDED TO THE COMMISSION.

7 (B) (1) THIS SECTION APPLIES TO A SERVICE CONTRACT THAT:

8 (I) WILL IS SOLICITED BY THE COMMISSION AS A
9 MANAGEMENT PLAN INTENDED TO ADVERSELY AFFECT A COMMISSION
10 EMPLOYEE EMPLOYEES REPRESENTED BY A CERTIFIED REPRESENTATIVE; AND

11 (II) IN THE ESTIMATION OF THE COMMISSION
12 PROCUREMENT OFFICER, WILL EXCEED AN ANNUAL COST OF ~~\$50,000~~ \$75,000
13 AS CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

14 (2) THE COMMISSION SHALL ADJUST THE ANNUAL COST
15 ESTIMATION DESCRIBED IN PARAGRAPH (1)(II) OF THIS SUBSECTION TO THE
16 NEAREST \$100 EVERY 2 YEARS, BEGINNING ON OCTOBER 1, 2007, TO REFLECT
17 ANY AGGREGATE INCREASE IN THE CONSUMER PRICE INDEX FOR ALL URBAN
18 CONSUMERS, FOR THE WASHINGTON-BALTIMORE METROPOLITAN AREA, OR
19 ANY SUCCESSOR INDEX, FOR THE PREVIOUS 2 YEARS.

20 (3) THIS SECTION DOES NOT APPLY TO:

21 ~~(I) A CONTRACT IN WHICH THE PRIMARY PURPOSE IS TO~~
22 ~~OBTAIN GOODS OR CONSTRUCTION SERVICES;~~

23 ~~(II) A SERVICE THAT THE MONTGOMERY COUNTY OR~~
24 ~~PRINCE GEORGE’S COUNTY COUNCILS AUTHORIZE OR REQUIRE TO BE~~
25 ~~PROVIDED BY AN INDEPENDENT CONTRACTOR;~~

26 ~~(III) A SERVICE PROVIDED BY A CONSULTANT; OR~~

27 ~~(IV) A PROFESSIONAL SERVICE, UNLESS THE SERVICE IS~~
28 ~~PROVIDED BY BARGAINING UNIT EMPLOYEES WHEN THE CONTRACT IS~~
29 ~~SOLICITED.~~

1 **(I) SOLICITATION OF A SERVICE CONTRACT AS PART OF A**
2 **MANAGEMENT PLAN OR PROGRAM INTENDED TO AUGMENT BARGAINING UNIT**
3 **WORK AND NOT FOR A PRESENT OR EVENTUAL PURPOSE OF ADVERSELY**
4 **AFFECTING COMMISSION EMPLOYEES REPRESENTED BY THE CERTIFIED**
5 **REPRESENTATIVE;**

6 **(II) SOLICITATION OF A SERVICE CONTRACT FOR WHICH**
7 **THE PRIMARY PURPOSE IS TO OBTAIN GOODS OR CONSTRUCTION SERVICES;**

8 **(III) SOLICITATION OF A SERVICE CONTRACT THAT THE**
9 **COMMISSION'S PURCHASING OFFICIALS REASONABLY BELIEVE AND EXPRESS IN**
10 **WRITING MAY NEGATIVELY AFFECT THE POTENTIAL FOR PARTICIPATION BY A**
11 **MINORITY BUSINESS ENTERPRISE ACCORDING TO ANY MINORITY BUSINESS**
12 **ENTERPRISE UTILIZATION PROGRAM AUTHORIZED UNDER § 2-302 OF THIS**
13 **ARTICLE;**

14 **(IV) SOLICITATION OF A SERVICE CONTRACT FOR A SERVICE**
15 **PROVIDED BY A CONSULTANT;**

16 **(V) SOLICITATION OF A SERVICE CONTRACT FOR A**
17 **PROFESSIONAL SERVICE, UNLESS THE SCOPE OF SERVICE IS PROVIDED BY**
18 **BARGAINING UNIT EMPLOYEES WHEN THE CONTRACT IS SOLICITED;**

19 **(VI) SOLICITATION OF A SERVICE CONTRACT THAT THE**
20 **COMMISSION REASONABLY BELIEVES IS:**

21 **1. NECESSARY TO MEET AN EMERGENT OR**
22 **IMMINENT THREAT TO PUBLIC HEALTH, WELFARE, OR SAFETY;**

23 **2. REQUIRED TO COMPLY WITH THE REQUIREMENTS**
24 **OF ANY GRANT RELATED TO THE FUNDING OF THAT CONTRACT; OR**

25 **3. RELATED TO THE SETTLEMENT OF AN INSURANCE**
26 **CLAIM;**

27 **(VII) SOLICITATION OF A SERVICE CONTRACT THAT IS IN THE**
28 **BEST INTEREST OF AN EMPLOYEE BASED ON A NEED FOR SPECIALIZED SAFETY**
29 **EXPERIENCE OR EXPERTISE;**

1 (VIII) SOLICITATION OF A SERVICE CONTRACT FOR ANY
2 SERVICE PROVIDED BY A PUBLIC ENTITY OR PROVIDED TO THE COMMISSION IN
3 ACCORDANCE WITH A PUBLIC-PRIVATE PARTNERSHIP WITH A PRIVATE ENTITY;

4 (IX) SOLICITATION OF A SERVICE CONTRACT TO BE
5 AWARDED ON A NONCOMPETITIVE BASIS IN ACCORDANCE WITH ALL
6 APPLICABLE LAWS, RULES, AND REGULATIONS REGARDING THOSE CONTRACTS;

7 (X) A SERVICE CONTRACT ENTERED INTO PRIOR TO
8 OCTOBER 31, 2007;

9 (XI) THE RENEWAL OR REBIDDING OF A SERVICE CONTRACT
10 ENTERED INTO PRIOR TO OCTOBER 31, 2007, IF THE RENEWAL OR REBIDDING
11 OF THE SERVICE CONTRACT DOES NOT RESULT IN A GREATER ADVERSE EFFECT
12 ON BARGAINING UNIT EMPLOYEES THAN EXISTED PRIOR TO ITS RENEWAL OR
13 REBIDDING;

14 (XII) SOLICITATION OF A SERVICE CONTRACT FOR A CAPITAL
15 IMPROVEMENT PROJECT OR ASSET MANAGEMENT PROJECT;

16 (XIII) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR
17 PARTICULAR SERVICE CONTRACT THAT THE COMMISSION REASONABLY
18 BELIEVES SHOULD BE PERFORMED BY AN INDEPENDENT CONTRACTOR TO
19 ELIMINATE A CONFLICT OF INTEREST OTHERWISE APPARENT IF THE SERVICES
20 ARE PERFORMED BY A BARGAINING UNIT EMPLOYEE;

21 (XIV) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR
22 PARTICULAR SERVICE CONTRACT WHEN THE NEED FOR THE SERVICE OR
23 ACTIVITY IS SUCH THAT THE TIME NECESSARY FOR THE ANALYSIS REQUIRED
24 UNDER SUBSECTION (D) OF THIS SECTION WOULD:

25 1. RESULT IN DAMAGE TO COMMISSION PROPERTY;

26 2. RESULT IN INJURY TO INDIVIDUALS; OR

27 3. SUBSTANTIALLY HINDER THE OBJECTIVE OF
28 CONSTRUCTING OR MAINTAINING SAFE, SANITARY, AND DECENT PROPERTIES
29 AND FACILITIES; OR

1 **(XV) A SERVICE CONTRACT THAT EITHER THE MONTGOMERY**
2 **COUNTY COUNCIL OR THE PRINCE GEORGE'S COUNTY COUNCIL AUTHORIZES**
3 **OR REQUIRES BE PROVIDED BY AN INDEPENDENT CONTRACTOR.**

4 **(4) THIS SECTION DOES NOT APPLY TO OR LIMIT THE AUTHORITY**
5 **OF THE COMMISSION TO ABOLISH A BARGAINING UNIT POSITION OR CONDUCT A**
6 **REDUCTION IN FORCE.**

7 ~~**(C) THE COMMISSION MAY NOT SOLICIT A SERVICE CONTRACT UNDER**~~
8 ~~**THIS SUBTITLE UNLESS THE EXECUTIVE DIRECTOR HAS CERTIFIED THAT THE**~~
9 ~~**SERVICE CONTRACT COMPLIES WITH SUBSECTIONS (D) AND (E) OF THIS**~~
10 ~~**SECTION.**~~

11 **(C) BEFORE THE COMMISSION SOLICITS ANY SERVICE CONTRACT**
12 **UNDER THIS SECTION, THE SECRETARY-TREASURER MUST CERTIFY THAT THE**
13 **COMMISSION HAS COMPLIED WITH SUBSECTIONS (D) AND (E) OF THIS SECTION.**

14 **(D) (1) THE ~~EXECUTIVE DIRECTOR~~ SECRETARY-TREASURER MAY**
15 **NOT CERTIFY THAT THE COMMISSION ~~MAY SOLICIT A SERVICE CONTRACT~~ HAS**
16 **COMPLIED WITH THE REQUIREMENTS OF THIS SECTION UNLESS THE**
17 **COMMISSION:**

18 **(I) HAS TAKEN STEPS TO CONSIDER ALTERNATIVES TO THE**
19 **SERVICE CONTRACT, INCLUDING REORGANIZATION, REEVALUATION OF**
20 **SERVICE, AND REEVALUATION OF PERFORMANCE;**

21 **(II) HAS CONSULTED WITH THE CERTIFIED**
22 **REPRESENTATIVE OF ANY COMMISSION EMPLOYEES WHO WILL BE ADVERSELY**
23 **AFFECTED IF THE COMMISSION ENTERS INTO THE SERVICE CONTRACT; AND**

24 **(III) HAS DEMONSTRATED, BASED ON A COST COMPARISON**
25 **ANALYSIS AND GOOD FAITH ESTIMATES, THAT THE COMMISSION WILL SAVE,**
26 ~~**OVER THE TERM OF THE SERVICE CONTRACT, 25% OR MORE OF THE VALUE OF**~~
27 ~~**THE SERVICE CONTRACT**~~ **BY ENTERING INTO A SERVICE CONTRACT, AT LEAST**
28 **AN AMOUNT EQUAL TO THE LESSER OF \$200,000 OR 20% OF THE ESTIMATED**
29 **NET PRESENT VALUE OF THE COST OF THE SERVICE CONTRACT.**

30 **(2) THE COMMISSION SHALL ESTIMATE AND COMPARE AT LEAST**
31 **THE FOLLOWING IN THE COST COMPARISON ANALYSIS:**

1 (I) DIRECT COSTS, INCLUDING FRINGE BENEFITS AND THE
 2 ASSUMPTION THAT THE CONTRACTOR WILL PAY EMPLOYEES WHO PERFORM
 3 WORK UNDER THE SERVICE CONTRACT AT ~~RATES COMPARABLE TO RATES IN~~
 4 ~~ANY EXISTING COLLECTIVE BARGAINING AGREEMENT~~ THE LESSER OF THE
 5 LABOR RATE ESTABLISHED AS THE COUNTY LIVING WAGE RATE FOR
 6 MONTGOMERY COUNTY OR PRINCE GEORGE'S COUNTY;

7 (II) ~~INDIRECT OVERHEAD COSTS, INCLUDING THE~~
 8 ~~PROPORTIONAL SHARE OF EXISTING ADMINISTRATIVE SALARIES AND~~
 9 ~~BENEFITS, RENT, EQUIPMENT COSTS, UTILITIES, AND MATERIALS~~ PROPERLY
 10 ALLOCABLE TO THE BARGAINING UNIT WORK OR SERVICE CONTRACT
 11 ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AND

12 (III) ~~ANY CONTINUING OR TRANSITIONAL COSTS THAT~~
 13 ~~WOULD BE DIRECTLY ASSOCIATED WITH CONTRACTING FOR THE SERVICES,~~
 14 ~~INCLUDING UNEMPLOYMENT COMPENSATION AND THE COSTS OF~~
 15 ~~TRANSITIONAL SERVICES.~~

16 (III) ANY COSTS ASSOCIATED WITH UNEMPLOYMENT
 17 COMPENSATION OR OUTPLACEMENT ASSISTANCE FOR DISPLACED EMPLOYEES.

18 (E) (1) THE COMMISSION SHALL:

19 (I) ~~DEVELOP AND SUBMIT A FORMAL PLAN OF ASSISTANCE~~
 20 ~~FOR EACH COMMISSION EMPLOYEE WHO WILL BE ADVERSELY AFFECTED BY~~
 21 ~~THE SERVICE CONTRACT; AND~~

22 (II) ~~BARGAIN IN GOOD FAITH WITH THE CERTIFIED~~
 23 ~~REPRESENTATIVE BEFORE ADOPTING A FINAL PLAN OF ASSISTANCE,~~
 24 ~~INCLUDING, IF NECESSARY, SUBMISSION OF THE MATTER TO~~
 25 ~~MEDIATION ARBITRATION UNDER § 2-112.1(L) OF THIS SUBTITLE~~ PROVIDE NOT
 26 LESS THAN 60 DAYS ADVANCE NOTICE AND MAINTAIN AT ALL TIMES A FORMAL
 27 PLAN OF OUTPLACEMENT ASSISTANCE FOR EACH COMMISSION EMPLOYEE WHO
 28 IS REPRESENTED BY A CERTIFIED REPRESENTATIVE AND WILL BE ADVERSELY
 29 AFFECTED BY A SERVICE CONTRACT THAT IS SUBJECT TO THIS SECTION.

30 (2) THE PLAN DESCRIBED IN PARAGRAPH ~~(1)(I)~~ (1) OF THIS
 31 SUBSECTION SHALL INCLUDE:

1 (I) EFFORTS TO TRANSFER OR PLACE EACH ADVERSELY
2 AFFECTED COMMISSION EMPLOYEE IN A VACANT COMMISSION POSITION THAT
3 THEY ARE QUALIFIED TO PERFORM;

4 (II) INCLUSION IN THE SERVICE CONTRACT OF A
5 REQUIREMENT THAT THE CONTRACTOR SHALL:

6 1. NOTIFY THE COMMISSION OF ANY VACANT
7 POSITION FOR WHICH DISPLACED COMMISSION EMPLOYEES MAY APPLY; AND

8 2. CONSIDER AND GIVE ~~FIRST~~ PREFERENCE TO
9 HIRING DISPLACED COMMISSION EMPLOYEES; AND

10 (III) WRITTEN NOTIFICATION OF THE ANTICIPATED
11 ADVERSE EFFECT ON ONE OR MORE JOB CLASSIFICATIONS TO EACH AFFECTED
12 COMMISSION EMPLOYEE AND THE CERTIFIED REPRESENTATIVE AT LEAST ~~120~~
13 90 CALENDAR DAYS BEFORE THE ANTICIPATED ADVERSE EFFECT WILL OCCUR.

14 (F) THE CERTIFIED REPRESENTATIVE OF AN ADVERSELY AFFECTED
15 COMMISSION EMPLOYEE MAY SUBMIT A PROPOSAL ~~IN RESPONSE TO A~~
16 ~~SOLICITATION, UNDER APPLICABLE PROCUREMENT REGULATIONS, TO HAVE~~
17 ~~COMMISSION EMPLOYEES PERFORM FOR EXISTING BARGAINING UNIT~~
18 EMPLOYEES TO CONTINUE PERFORMING THE SERVICES DESCRIBED IN THE
19 SOLICITATION WHILE SUBSTANTIALLY ACHIEVING THE TARGETED SAVINGS.

20 (G) (1) (I) IF THE COMMISSION FAILS TO COMPLY WITH ANY
21 PROVISION OF THIS ~~SUBTITLE~~ SECTION AND A COMMISSION EMPLOYEE IS
22 ADVERSELY AFFECTED, THE CERTIFIED REPRESENTATIVE OF THE EMPLOYEE
23 MAY FILE AN ~~ACTION~~ APPEAL ON THE RECORD ON BEHALF OF THE EMPLOYEE
24 ~~IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, THE CIRCUIT COURT FOR~~
25 ~~PRINCE GEORGE'S COUNTY, OR THE DISTRICT COURT OF MARYLAND,~~
26 ~~DEPENDING ON THE AMOUNT IN CONTROVERSY~~ BEFORE THE STATE OFFICE OF
27 ADMINISTRATIVE HEARINGS IN ACCORDANCE WITH THE CONTESTED CASE
28 PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2
29 OF THE STATE GOVERNMENT ARTICLE.

30 (H) ~~IF A COURT ENTERS A JUDGMENT IN FAVOR OF A~~
31 ~~COMMISSION EMPLOYEE, THE COMMISSION SHALL REIMBURSE THE EMPLOYEE~~
32 ~~FOR ANY LOSSES INCURRED BY THE EMPLOYEE AND REIMBURSE THE~~
33 ~~CERTIFIED REPRESENTATIVE FOR ALL COSTS AND ATTORNEYS' FEES.~~

1 **(II) 1. IF THE HEARING OFFICER FINDS THAT THE**
2 **COMMISSION WAS ARBITRARY AND CAPRICIOUS IN SOLICITING OR ENTERING**
3 **INTO A SERVICE CONTRACT THAT IS SUBJECT TO THE REQUIREMENTS OF THIS**
4 **SECTION, AND THE COMMISSION EMPLOYEE HAS BEEN ADVERSELY AFFECTED,**
5 **THE HEARING OFFICER MAY AWARD THE EMPLOYEE ACTUAL DAMAGES FOR**
6 **BACK PAY AND FRONT PAY FOR A COMBINED PERIOD OF UP TO 2 YEARS**
7 **BEGINNING ON THE DATE THE EMPLOYEE WAS FIRST ADVERSELY AFFECTED,**
8 **PROVIDED THAT THE EMPLOYEE IS OBLIGATED TO MITIGATE THE ACTUAL**
9 **DAMAGES.**

10 **2. THE AWARD OF ACTUAL DAMAGES AUTHORIZED**
11 **UNDER THIS PARAGRAPH SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR A**
12 **VIOLATION OF THIS SECTION THAT IS AVAILABLE TO THE EMPLOYEE, AND NO**
13 **LIABILITY SHALL ACCRUE FOR PUNITIVE DAMAGES, CONSEQUENTIAL DAMAGES,**
14 **OR DAMAGES FOR EMOTIONAL DISTRESS OR PAIN AND SUFFERING.**

15 **(2) NONCOMPLIANCE WITH THIS SECTION MAY NOT INVALIDATE**
16 **A CONTRACT AWARD OR PROPOSED CONTRACT AWARD THAT THE COMMISSION**
17 **HAS OTHERWISE VALIDLY AWARDED OR ISSUED.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.