P2 1lr2600 CF HB 1348

By: Senators Griffith, Pinsky, Sydnor, Beidle, Jackson, McCray, Guzzone, Augustine, Elfreth, Smith, and West

Introduced and read first time: January 29, 2021

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 27, 2021

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Procurement – Department of General Services – MBE Program Compliance Officer Review and Oversight

FOR the purpose of requiring the Secretary of General Services, in consultation with the Chief Procurement Officer in the Department of General Services, to appoint an MBE Program Compliance Officer in the Office of State Procurement to ensure compliance by certain procurement units with the participation goals of the State Minority Business Enterprise Program: requiring the Officer to report on certain matters to the Board of Public Works and the Legislative Policy Committee of the General Assembly on or before a certain date each year: requiring certain procurement units to submit certain periodic and annual reports to the Officer; and generally relating to the MBE Program Compliance Officer in the Department of General Services requiring certain regulations of a primary procurement unit to require the unit to make a good faith effort to solicit a certain minimum number of bids from a certified minority business enterprise for a certain small procurement; requiring certain units to require prospective contractors to attend a certain prebid or preproposal meeting under certain circumstances and to make the contact information of the prospective contractors available to the meeting attendees; requiring a unit to provide certain information to the Governor's Office of Small, Minority, and Women Business Affairs before awarding a certain contract; requiring the Governor's Office of Small, Minority, and Women Business Affairs to take certain actions within a certain number of business days after receiving a certain submission; requiring a unit to consider certain recommendations and provide a certain notice to the Governor's Office of Small, Minority, and Women Business

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

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



Affairs; requiring a unit that unbundles a procurement based on certain 1 2 recommendations to resubmit the resulting contracts to the Governor's Office of 3 Small, Minority, and Women Business Affairs regardless of certain factors; requiring 4 a certain report to state the total number and value of certain procurement contracts 5 for which no minority business enterprise participation goals were established; 6 requiring a certain report to provide a list of certain contractors that failed to meet 7 certain minority business participation goals or subgoals; requiring a certain report 8 to state the total number and value of certain contracts submitted to the Governor's 9 Office of Small, Minority, and Women Business Affairs under certain provisions of 10 law and to include certain information related to those contracts; requiring a certain report to include information regarding participation by minority business 11 12 enterprises in certain procurements and the Small Business Reserve Program and each unit's attainment or nonattainment of certain goals and subgoals in certain 13 14 fiscal years; requiring the Department of Legislative Services to conduct a review of 15 the implementation of statutory and regulatory requirements of the Minority Business Enterprise Program; requiring the review to examine certain factors; 16 17 requiring the Department to report its findings and recommendations to certain 18 committees of the General Assembly on or before a certain date; providing for the 19 delayed effective date of certain provisions of this Act; making certain provisions of 20 this Act subject to a certain contingency; and generally relating to the Minority 21 Business Enterprise Program.

- 22 BY repealing and reenacting, without amendments,
- 23 Article State Finance and Procurement
- 24 Section 11–101(a) and (d) and 14–302(a)(1)(i)1.
- 25 Annotated Code of Maryland
- 26 (2015 Replacement Volume and 2020 Supplement)
- 27 BY repealing and reenacting, with amendments,
- 28 Article State Finance and Procurement
- Section $\frac{14-302(a)(9)}{13-109}$, 14-302(a)(3) and (9), and 14-305
- 30 Annotated Code of Maryland
- 31 (2015 Replacement Volume and 2020 Supplement)
- 32 BY adding to
- 33 Article State Finance and Procurement
- 34 Section 14-306 14-302(a)(16)
- 35 Annotated Code of Maryland
- 36 (2015 Replacement Volume and 2020 Supplement)
- 37 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 38 That the Laws of Maryland read as follows:
- 39 Article State Finance and Procurement
- 40 11–101.

1	(a)	In this Division II the following words have the meanings indicated unless:
2		(1) the context clearly requires a different meaning; or
3		(2) a different definition is provided for a particular title or provision.
4	(d)	"Board" means the Board of Public Works.
5	<u>13–109.</u>	
6	<u>(a)</u>	In this section, "small procurement" means a procurement for which:
7		(1) a unit spends \$50,000 or less;
8 9	expected an	(2) a contractor provides services subject to § 11–202(3) of this article for nual revenues of \$50,000 or less;
10 11 12	-	(3) the Department of General Services or the Department of tion is seeking to award a procurement contract for a construction with a value ,000 or less; or
13 14 15	and Pension year for:	(4) for purposes of administering Title 29, Subtitle 1 of the State Personnel as Article, the State Retirement Agency spends \$50,000 or less during a fiscal
16 17	physician; a	(i) expenses related to independent medical evaluations by a nd
18 19	administrat	(ii) any expenses related to testimony by the physician at ive hearings on behalf of the Agency.
20 21	(b) primary pro	A unit may make small procurements in accordance with the regulations of ecurement units.
22 23	(c) division of a	A primary procurement unit may not create a small procurement by artificial procurement.
24	<u>(d)</u>	Any regulation of a primary procurement unit to govern small procurements:
25		(1) shall provide for a simplified administrative procedure;
26		(2) shall be consistent with the basic intent of this Division II; [and]
27 28 29 30	UNIT TO M	(3) FOR SMALL PROCUREMENTS IN CATEGORY II AND CATEGORY III, D IN THE STATE PROCUREMENT REGULATIONS, SHALL REQUIRE THE LAKE A GOOD FAITH EFFORT TO SOLICIT AT LEAST ONE BID FROM A MINORITY BUSINESS ENTERPRISE; AND

1		(4) may	not be	disadvantageous economically to the State.
2	<u>(e)</u>	At least ev	ery 3 ye	ears, the Board shall:
3		<u>(1)</u> <u>revi</u>	ew the	prevailing costs of labor and materials; and
4 5	appropriate			ed by changes in cost, recommend to the General Assembly exceiling for a small procurement.
6	14–302.			
7 8 9 10	overall perc	entage goal	of the u	Except for leases of real property, each unit shall structure stent with the purposes of this subtitle, to try to achieve an init's total dollar value of procurement contracts being made d minority business enterprises.
11		(3) <u>Eac</u>	n unit s	hall:
12 13	accordance	(<u>i)</u> with § 11–20		der the practical severability of all contracts and, in is article, may not bundle contracts;
14 15 16				REQUIRE PROSPECTIVE CONTRACTORS TO ATTEND A IEETING AS A PREREQUISITE TO SUBMITTING A BID OR MENT BY THE UNIT; AND
17 18	PROSPECT	IVE CONTR	<u>2.</u> ACTOR	MAKE THE CONTACT INFORMATION OF THE S AVAILABLE TO THE MEETING ATTENDEES;
19 20 21	contract to any, for the		he appr	ement a program that will enable the unit to evaluate each copriate minority business enterprise participation goals, if
22 23	prime procu	rement con	<u>1.</u> tract;	the potential subcontract opportunities available in the
$\begin{array}{c} 24 \\ 25 \end{array}$	to respond o	competitivel	2 <u>.</u> y to the	the availability of certified minority business enterprises potential subcontract opportunities;
26 27	(2) of this su	ubsection;	<u>3.</u>	the contract goal guidelines established under paragraph
28 29	of this subs	ection; and	<u>4.</u>	the subgoal guidelines established under paragraph (1)(iii)
30			<u>5.</u>	other factors that contribute to constitutional goal setting;

$\frac{1}{2}$	[(iii)] (IV) monitor and collect data with respect to prime contractor compliance with contract goals; and
3 4	[(iv)] (V) institute corrective action when prime contractors do not make good–faith efforts to comply with contract goals.
5 6 7 8 9	(9) (i) 1. If a contractor, including a certified minority business enterprise, does not achieve all or a part of the minority business enterprise participation goals on a contract, the unit shall make a finding of whether the contractor has demonstrated that the contractor took all necessary and reasonable steps to achieve the goals, including compliance with paragraph (7) of this subsection.
10 11 12	2. A waiver of any part of the minority business enterprise goals for a contract shall be granted if a contractor provides a reasonable demonstration of good—faith efforts to achieve the goals.
13 14 15	(ii) If the unit determines that a waiver should be granted in accordance with subparagraph (i) of this paragraph, the unit may not require the contractor to renegotiate any subcontract in order to achieve a different result.
16 17 18 19 20	(iii) The SUBJECT TO PARAGRAPH (16) OF THIS SUBSECTION, THE head of the unit may waive any of the requirements of this subsection relating to the establishment, use, and waiver of contract goals for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those requirements.
21 22 23	(iv) 1. Except for waivers granted in accordance with subparagraph (iii) of this paragraph, when a waiver determination is made, the unit shall issue the determination in writing.
24	2. The head of the unit shall:
25 26	A. keep one copy of the waiver determination and the reasons for the determination; and
27 28 29	B. forward one copy of the waiver determination to the Governor's Office of Small, Minority, and Women Business Affairs AND THE MBE PROGRAM COMPLIANCE OFFICER IN THE DEPARTMENT OF GENERAL SERVICES.
30 31 32 33 34	(v) On or before July 31 of each year, each unit shall submit directly to the Board of Public Works {and}, the Governor's Office of Small, Minority, and Women Business Affairs, AND THE MBE PROGRAM COMPLIANCE OFFICER IN THE DEPARTMENT OF GENERAL SERVICES an annual report of waivers requested and waivers granted under this paragraph

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SUBSECTION;

1 2 3	(vi) The report required under subparagraph (v) of this paragraph shall contain the following information on those contracts where the unit considered a contractor's request for waiver of all or a portion of the minority business enterprise goals:
4	1. the contract titles, numbers, and dates;
5	2. the number of waiver requests received;
6	3. the number of waiver requests granted; and
7	4. any other information specifically requested by the Board.
8 9	(16) (I) 1. THIS PARAGRAPH APPLIES ONLY TO A PROCUREMENT CONTRACT WITH AN ESTIMATED VALUE OF \$1,000,000 OR MORE.
10	2. This paragraph does not apply to an expedited
11	-
12	OR EMERGENCY PROCUREMENT, BUT DOES APPLY TO A SOLE SOURCE PROCUREMENT WITH AN ESTIMATED VALUE OF \$1,000,000 OR MORE FOR WHICH
13	THE HEAD OF THE UNIT PROPOSES TO WAIVE ANY OF THE REQUIREMENTS OF THIS
14	SUBSECTION RELATING TO THE ESTABLISHMENT, USE, AND WAIVER OF CONTRACT
15	GOALS UNDER PARAGRAPH (9)(III) OF THIS SUBSECTION.
1.0	(T) Dancar (T) and a complete
16	(II) BEFORE AWARDING A CONTRACT COVERED UNDER THIS
17	PARAGRAPH, A UNIT SHALL PROVIDE TO THE GOVERNOR'S OFFICE OF SMALL,
18	MINORITY, AND WOMEN BUSINESS AFFAIRS:
19	1. A DRAFT OF ANY PROPOSED MINORITY BUSINESS
20	ENTERPRISE PARTICIPATION GOALS AND SUBGOALS FOR THE CONTRACT; OR
20	ENTERPRISE PARTICIPATION GOALS AND SUBGOALS FOR THE CONTRACT, OR
21	2. IF THE UNIT PROPOSES TO WAIVE ANY OF THE
22	REQUIREMENTS OF THIS SUBSECTION RELATING TO THE ESTABLISHMENT, USE, AND
23	WAIVER OF CONTRACT GOALS FOR A SOLE SOURCE PROCUREMENT UNDER
24	PARAGRAPH (9)(III) OF THIS SUBSECTION, THE REASONS FOR THE PROPOSED
25	WAIVER.
20	WILL V LIVE
26	(III) NO LATER THAN 10 BUSINESS DAYS AFTER RECEIVING A
27	SUBMISSION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE GOVERNOR'S
28	OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL:
20	OFFICE OF SMALL, MINORITI, AND WOMEN DUSINESS AFFAIRS SHALL.
29	1. A. APPROVE THE MINORITY BUSINESS
30	ENTERPRISE GOALS AND SUBGOALS PROPOSED BY THE UNIT OR, IN THE CASE OF A
31	SOLE SOURCE PROCUREMENT, THE PROPOSED WAIVER OF THE REQUIREMENTS OF
$\frac{31}{32}$	THIS SUBSECTION RELATING TO THE ESTABLISHMENT, USE, AND WAIVER OF
	CONTRACT COALS FOR THE DROCLIREMENT LINDER DARACRADH (9)(III) OF THIS

1	B. ESTABLISH ALTERNATIVE MINORITY BUSINESS
2	ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT; OR
3	C. REQUIRE THE UNIT TO ESTABLISH ALTERNATIVE
4	MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT
5	BASED ON THE RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL,
6	MINORITY, AND WOMEN BUSINESS AFFAIRS; AND
7	2. IF APPROPRIATE, MAKE RECOMMENDATIONS ON HOW
8	THE PROCUREMENT COULD BE UNBUNDLED TO FACILITATE PARTICIPATION BY
9	MINORITY BUSINESS ENTERPRISES.
0	(IV) A UNIT SHALL:
1	1. CONSIDER THE RECOMMENDATION MADE BY THE
12	GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS
13	UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH; AND
1	9 NOTHEN THE COVERNOR'S OFFICE OF SMALL
4	2. NOTIFY THE GOVERNOR'S OFFICE OF SMALL,
L5 L6	MINORITY, AND WOMEN BUSINESS AFFAIRS OF ANY CHANGES TO THE MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT OR ANY
LO L7	UNBUNDLING OF THE PROCUREMENT THAT RESULTS FROM THE OFFICE'S REVIEW.
. 1	UNBUNDLING OF THE PROCUREMENT THAT RESULTS FROM THE OFFICE S REVIEW.
8	(V) IF A UNIT UNBUNDLES A PROCUREMENT BASED ON THE
9	RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND
20	WOMEN BUSINESS AFFAIRS, THE UNIT SHALL RESUBMIT THE RESULTING
21	CONTRACTS TO THE OFFICE FOR REVIEW UNDER THIS PARAGRAPH REGARDLESS OF
22	THE ESTIMATED VALUE OF THE RESULTING CONTRACTS.
23	14-306.
	(A) The Cooperaty of Covers at Copyright by covery marries with
24	(A) THE SECRETARY OF GENERAL SERVICES, IN CONSULTATION WITH THE CHIEF PROCUREMENT OFFICER, SHALL APPOINT AN MBE PROGRAM COMPLIANCE
25 26	OFFICER IN THE OFFICE OF STATE PROCUREMENT TO ENSURE UNIT COMPLIANCE
20 27	WITH THE PARTICIPATION GOALS OF THE MINORITY BUSINESS ENTERPRISE
28	PROGRAM UNDER THIS SUBTITLE.
10	T WOOM ON DEW 11110 DOBITION.
29	(B) ON OR BEFORE SEPTEMBER 1 EACH YEAR, THE MBE PROGRAM
30	COMPLIANCE OFFICER SHALL REPORT TO THE BOARD AND, SUBJECT TO § 2–1257
31	OF THE STATE GOVERNMENT ARTICLE, THE LEGISLATIVE POLICY COMMITTEE FOR

THE PRECEDING FISCAL YEAR:

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$\frac{1}{2}$	OF A UNIT FOR GRANTING A WAIVER OF THE MINORITY BUSINESS ENTERPRISE GOALS UNDER § 14–302 OF THIS SUBTITLE;
3	(2) A DETAILED COMPARISON OF:
4 5	(I) THE MINORITY BUSINESS ENTERPRISE PARTICIPATION GOAL SET BY A UNIT FOR ITS PROCUREMENT CONTRACTS; AND
6 7 8	(II) THE ACTUAL PARTICIPATION OF MINORITY BUSINESS ENTERPRISES IN THAT UNIT'S PROCUREMENT CONTRACTS AT THE END OF THE FISCAL YEAR; AND
9 10	(3) ANY OTHER RELEVANT INFORMATION AS REQUIRED BY THE BOARD.
11	<u>14–305.</u>
12 13 14 15	(a) (1) Within 90 days after the end of the fiscal year, each unit shall report to the Governor's Office of Small, Minority, and Women Business Affairs, the certification agency, and, subject to § 2–1257 of the State Government Article, the Joint Committee on Fair Practices and Personnel Oversight.
16	(2) A report under this subsection shall for the preceding fiscal year:
17 18 19 20	(i) state the total number and value of procurement contracts between the unit and certified minority business enterprises, by specific category of minority business enterprise, including whether the minority business enterprise participated as a prime contractor or as a subcontractor;
21 22 23	(ii) indicate the percentage that those procurement contracts represent, by specific category of minority business enterprise, of the total number and value of procurement contracts;
24 25 26	(iii) state the total number and the names of certified minority business enterprises that participated as prime contractors or as subcontractors on procurement contracts awarded by a unit;
27 28 29	(iv) for each minority business included in the report under item (iii) of this paragraph, list all procurement contracts awarded by a unit to the minority business enterprise, including a description of the contract; [and]
30 31 32 33	(V) STATE THE TOTAL NUMBER AND VALUE OF PROCUREMENT CONTRACTS ENTERED INTO BY THE UNIT, INCLUDING EMERGENCY, EXPEDITED, AND SOLE SOURCE PROCUREMENTS, FOR WHICH NO MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS WERE ESTABLISHED;

1	(VI) PROVIDE A LIST OF CONTRACTORS THAT FAILED TO MEET
2	MINORITY BUSINESS PARTICIPATION GOALS OR SUBGOALS ESTABLISHED IN A
3	CONTRACT BETWEEN THE UNIT AND THE CONTRACTOR;
	()
4	(VII) STATE THE TOTAL NUMBER AND VALUE OF PROCUREMENT
5	CONTRACTS SUBMITTED BY THE UNIT TO THE GOVERNOR'S OFFICE OF SMALL,
6	MINORITY, AND WOMEN BUSINESS AFFAIRS FOR REVIEW UNDER § 14–302(A)(16)
7	OF THIS SUBTITLE;
8	(VIII) FOR EACH CONTRACT INCLUDED IN THE REPORT UNDER
9	ITEM (VII) OF THIS PARAGRAPH, INDICATE:
10	1. WHETHER THE GOVERNOR'S OFFICE OF SMALL,
11	MINORITY, AND WOMEN BUSINESS AFFAIRS:
12	A. APPROVED THE MINORITY BUSINESS ENTERPRISE
13	GOALS AND SUBGOALS PROPOSED BY THE UNIT OR THE UNIT'S PROPOSED WAIVER
14	OF REQUIREMENTS OF § 14–302(A) RELATING TO THE ESTABLISHMENT, USE, AND
15	WAIVER OF CONTRACT GOALS FOR THE PROCUREMENT;
16	B. ESTABLISHED ALTERNATIVE MINORITY BUSINESS
17	ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT;
18	C. REQUIRED THE UNIT TO ESTABLISH ALTERNATIVE
19	MINORITY BUSINESS ENTERPRISE GOALS AND SUBGOALS FOR THE CONTRACT
20	BASED ON THE RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL,
21	MINORITY, AND WOMEN BUSINESS AFFAIRS; OR
20	D
22	D. RECOMMENDED UNBUNDLING THE PROCUREMENT
23	TO FACILITATE PARTICIPATION BY MINORITY BUSINESS ENTERPRISES; AND
24	2. WHAT ACTIONS, IF ANY, THE UNIT TOOK TO
25	IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S OFFICE OF SMALL,
26	MINORITY, AND WOMEN BUSINESS AFFAIRS; AND
27	[(v)] (IX) contain other such information as required by the
28	Governor's Office of Small, Minority, and Women Business Affairs and the certification
29	agency and approved by the Board.
30	(3) As to procurement contracts for architectural services and engineering
30 31	(3) As to procurement contracts for architectural services and engineering services reported under paragraph (2) of this subsection, the report shall identify by
39 91	services reported under paragraph (2) of this subsection, the report shall identify by

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1	(ii) engineering services.
2 3 4	(4) A report under this subsection shall be in a form prescribed by the Governor's Office of Small, Minority, and Women Business Affairs and the certification agency and approved by the Board.
5 6 7 8	(b) (1) On or before December 31 of each year, the Governor's Office of Small, Minority, and Women Business Affairs shall submit to the Board of Public Works and, subject to § 2–1257 of the State Government Article, to the Legislative Policy Committee a report summarizing the information the Office receives under subsection (a) of this section.
9 10	(2) IN ADDITION TO THE INFORMATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE REPORT SHALL INCLUDE INFORMATION REGARDING:
11 12 13	(I) PARTICIPATION BY MINORITY BUSINESS ENTERPRISES IN EMERGENCY, EXPEDITED, AND SOLE SOURCE PROCUREMENTS AND THE SMALL BUSINESS RESERVE PROGRAM; AND
14 15 16 17	(II) EACH UNIT'S ATTAINMENT OR NONATTAINMENT OF THE OVERALL PERCENTAGE GOAL AND ANY SUBGOALS ESTABLISHED FOR THE UNIT UNDER § 14–302(A)(1) OF THIS SUBTITLE IN EACH OF THE IMMEDIATELY PRECEDING 5 FISCAL YEARS.
18 19	[(2)] (3) This report may be prepared in conjunction with the annual report required under § 9–306 of the State Government Article.
20 21 22 23	SECTION 2. AND BE IT FURTHER ENACTED, That: (a) The Department of Legislative Services shall conduct a review of the implementation of statutory and regulatory requirements of the Minority Business Enterprise Program.
24	(b) The review shall examine:
25	(1) the process for certifying businesses as minority business enterprises;
26 27	(2) the process for establishing minority business enterprise participation goals and subgoals for procurement contracts;
28 29 30 31	(3) outreach, training, and notification regarding the Minority Business Enterprise Program provided to candidates for minority business enterprise certification, certified minority business enterprises, and primary contractors that are not minority business enterprises;
32 33	(4) the application of minority business enterprise participation goals and program requirements to different types of contracts, including small procurements, sole

1	source procurements, emergency and expedited procurements, and Small Business Reserve
2	procurements;
3 4 5 6	(5) the experience of minority business enterprises that participate in State procurements with respect to their awareness of contracting opportunities with the State, prebid interactions with primary contractors that are not minority business enterprises, and participation as subcontractors on State procurement contracts; and
7 8	(6) tracking of actual minority business enterprise participation upon contract completion.
9 10 11 12	(c) On or before December 15, 2021, the Department of Legislative Services shall report its findings and recommendations to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee in accordance with § 2–1257 of the State Government Article.
13 14 15 16	SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2022, contingent on the enactment of legislation by the General Assembly to extend the termination date of the Minority Business Enterprise Program under § 14–309 of the State Finance and Procurement Article beyond July 1, 2022.
17 18	SECTION $\stackrel{2}{=}$ 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect October July 1, 2021.
	Approved:
	Governor.
	President of the Senate.
	Speaker of the House of Delegates.