

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 530 Session of 2013

INTRODUCED BY CLYMER, STERN, BROOKS, KORTZ, PICKETT, MCGEEHAN, SCHLOSSBERG, RAPP, MUNDY, ROZZI, KAUFFMAN, MACKENZIE, HESS, CAUSER, TALLMAN, KNOWLES, D. COSTA, HENNESSEY, WATSON, EVERETT, ROCK, SANTARSIERO, NEILSON, HAHN, SACCONI, CALTAGIRONE, DIGIROLAMO, MALONEY, HICKERNELL, MOUL, FLECK, BARRAR, TOEPEL, READSHAW, MARSHALL, GODSHALL, V. BROWN, TRUITT, MILLARD, SABATINA, COHEN, LAWRENCE, C. HARRIS, M. K. KELLER, MAHONEY, GINGRICH, DeLUCA, MULLERY, MILNE, GILLEN, FARINA, MARSICO, MURT, FABRIZIO, GIBBONS, GOODMAN, PAINTER AND FARRY, FEBRUARY 5, 2013

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 16, 2013

AN ACT

1 ~~To promote the general welfare and stimulate the economy of the~~ <--
2 ~~Commonwealth by requiring that all government agencies~~
3 ~~purchase only flags manufactured in the United States; and~~
4 ~~imposing a penalty.~~

5 AMENDING TITLE 62 (PROCUREMENT) OF THE PENNSYLVANIA CONSOLIDATED <--
6 STATUTES, REQUIRING COMMONWEALTH AGENCIES TO PROCURE ONLY
7 FLAGS THAT ARE MANUFACTURED IN THE UNITED STATES; AND
8 IMPOSING A PENALTY.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 ~~Section 1. Short title.~~ <--

12 ~~This act shall be known and may be cited as the Flag~~
13 ~~Procurement Act.~~

14 ~~Section 2. Legislative findings and declaration.~~

15 ~~(1) It is hereby determined by the General Assembly~~
16 ~~that:~~

1 ~~(i) The production of flags provides jobs and family~~
2 ~~incomes for residents of this Commonwealth.~~

3 ~~(ii) It has, for many years, been the policy of the~~
4 ~~Commonwealth to aid and support the development and~~
5 ~~expansion of industry in this Commonwealth in order to~~
6 ~~foster the economic well being of the Commonwealth and~~
7 ~~its people.~~

8 ~~(iii) The economy and general welfare of the~~
9 ~~Commonwealth and its people, as well as the economy and~~
10 ~~general welfare of the United States, are related to the~~
11 ~~preservation and development of the flag industry in this~~
12 ~~Commonwealth and in the other states of the United~~
13 ~~States.~~

14 ~~(2) The General Assembly declares it to be the policy of~~
15 ~~the Commonwealth and all government agencies should, at all~~
16 ~~times, aid and promote the development of the flag industry~~
17 ~~of the United States in order to stimulate and improve the~~
18 ~~economic well being of the Commonwealth and its people.~~

19 ~~Section 3. Definitions.~~

20 ~~The following words and phrases when used in this act shall~~
21 ~~have the meanings given to them in this section unless the~~
22 ~~context clearly indicates otherwise:~~

23 ~~"Executive agency." The Governor and the departments,~~
24 ~~boards, commissions, authorities and other officers and agencies~~
25 ~~of the Commonwealth. The term does not include any court or~~
26 ~~other officer or agency of the unified judicial system, the~~
27 ~~General Assembly and its officers and agencies or any~~
28 ~~independent agency or State affiliated entity.~~

29 ~~"Flag." Any of the following:~~

30 ~~(1) The flag of the United States, as defined in 4~~

1 ~~U.S.C. § 1 (relating to flag, stripes and stars on) and the~~
2 ~~executive orders entered in connection with that section,~~
3 ~~made of fabric, cloth or paper displayed from a staff or~~
4 ~~flagpole or in a window. The term does not include a~~
5 ~~depiction or emblem of the United States flag made of lights,~~
6 ~~paint, roofing, siding, paving materials, flora or balloons~~
7 ~~or any other similar building, landscaping or decorative~~
8 ~~component.~~

9 ~~(2) The flag of the Commonwealth, as described in~~
10 ~~section 1 of the act of June 13, 1907 (P.L.560, No.373),~~
11 ~~entitled "An act designating the official flag of the~~
12 ~~Commonwealth of Pennsylvania, and describing the same;~~
13 ~~providing for the carrying of such flag by the regiments of~~
14 ~~the National Guard of Pennsylvania; authorizing the Secretary~~
15 ~~of the Commonwealth to provide, and have deposited in the~~
16 ~~office of Secretary of the Commonwealth, a model of said~~
17 ~~flag, and making an appropriation therefor."~~

18 ~~"Government agency." The General Assembly and its officers~~
19 ~~and agencies, an executive agency, an independent agency or a~~
20 ~~State affiliated entity.~~

21 ~~"Independent agency." Boards, commissions and other agencies~~
22 ~~and officers of the Commonwealth that are not subject to the~~
23 ~~policy supervision and control of the Governor. The term does~~
24 ~~not include any State affiliated entity, any court or other~~
25 ~~officer or agency of the unified judicial system, the General~~
26 ~~Assembly and its officers and agencies, any State related~~
27 ~~institution, political subdivision or any local, regional or~~
28 ~~metropolitan transportation authority.~~

29 ~~"Procure." To acquire by purchase, lease or rent. The term~~
30 ~~does not include any rentals or leases where the term of the~~

1 ~~rental or lease is less than one month.~~

2 ~~"State affiliated entity." A Commonwealth authority or a~~
3 ~~Commonwealth entity. The term includes the Pennsylvania Turnpike~~
4 ~~Commission, the Pennsylvania Housing Finance Agency, the~~
5 ~~Pennsylvania Municipal Retirement Board, the Pennsylvania~~
6 ~~Infrastructure Investment Authority, the State Public School~~
7 ~~Building Authority, the Pennsylvania Higher Educational~~
8 ~~Facilities Authority and the State System of Higher Education.~~
9 ~~The term does not include any court or other officer or agency~~
10 ~~of the unified judicial system, the General Assembly and its~~
11 ~~officers and agencies, any State related institution, political~~
12 ~~subdivision or any local, regional or metropolitan~~
13 ~~transportation authority.~~

14 ~~"State related institution." The Pennsylvania State~~
15 ~~University, the University of Pittsburgh, Lincoln University or~~
16 ~~Temple University.~~

17 ~~"United States." The United States of America and all~~
18 ~~territory, continental or insular, subject to the jurisdiction~~
19 ~~of the United States.~~

20 ~~Section 4. Police powers.~~

21 ~~This act shall be deemed to be an exercise of the police~~
22 ~~powers of the Commonwealth for the protection of the health,~~
23 ~~safety and general welfare of the people of this Commonwealth.~~

24 ~~Section 5. Contract provisions.~~

25 ~~(a) Flags to be manufactured in United States. All~~
26 ~~government agencies shall procure only flags that are~~
27 ~~manufactured in the United States. A flag is manufactured in the~~
28 ~~United States if a substantial majority of the principal~~
29 ~~components are assembled into the final product in the United~~
30 ~~States. Contract documents for the procurement of flags shall~~

1 ~~contain a provision that the flags procured by the government~~
2 ~~agency shall be manufactured in the United States.~~

3 ~~(b) Exception. This section shall not apply where the head~~
4 ~~of the government agency states in writing that it is~~
5 ~~inconsistent with the public interest or that the cost is~~
6 ~~unreasonable.~~

7 ~~Section 6. Payment under contract and recovery of payments.~~

8 ~~A government agency shall not authorize, provide for or make~~
9 ~~a payment to a person under a contract containing the provisions~~
10 ~~required by section 5 unless the government agency is satisfied~~
11 ~~that the person has complied with the provisions. If a~~
12 ~~government agency determines that a person that supplied flags~~
13 ~~to the agency violated section 5, the agency may recover from~~
14 ~~the person any payment made by the government agency for the~~
15 ~~flags.~~

16 ~~Section 7. Penalty.~~

17 ~~A person who willfully violates the provisions of this act~~
18 ~~may be prohibited by the government agency from participation in~~
19 ~~contracts awarded by the government agency for a period of five~~
20 ~~years from the date of the determination that a violation has~~
21 ~~occurred. This penalty may be in addition to the withholding or~~
22 ~~recovery of payments under section 6.~~

23 ~~Section 8. Applicability.~~

24 ~~This act shall apply to the procurement of flags or contracts~~
25 ~~for the procurement of flags entered into on or after the~~
26 ~~effective date of this act.~~

27 ~~Section 40. Repeals.~~

28 ~~All acts and parts of acts are repealed insofar as they are~~
29 ~~inconsistent with this act.~~

30 ~~Section 41. Effective date.~~

1 ~~This act shall take effect in 60 days.~~

2 SECTION 1. CHAPTER 37 OF TITLE 62 OF THE PENNSYLVANIA <--
3 CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBCHAPTER TO READ:

4 SUBCHAPTER F

5 FLAG PROCUREMENT

6 SEC.

7 3761. SHORT TITLE.

8 3762. LEGISLATIVE FINDINGS AND DECLARATION.

9 3763. DEFINITIONS.

10 3764. POLICE POWERS.

11 3765. CONTRACT PROVISIONS.

12 3766. PAYMENT UNDER CONTRACT AND RECOVERY OF PAYMENTS.

13 3767. PENALTY.

14 § 3761. SHORT TITLE.

15 THIS SUBCHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE FLAG
16 PROCUREMENT ACT.

17 § 3762. LEGISLATIVE FINDINGS AND DECLARATION.

18 (A) FINDINGS.--IT IS HEREBY DETERMINED BY THE GENERAL
19 ASSEMBLY THAT:

20 (1) THE PRODUCTION OF FLAGS PROVIDES JOBS AND FAMILY
21 INCOMES FOR RESIDENTS OF THIS COMMONWEALTH.

22 (2) IT HAS, FOR MANY YEARS, BEEN THE POLICY OF THE
23 COMMONWEALTH TO AID AND SUPPORT THE DEVELOPMENT AND EXPANSION
24 OF INDUSTRY IN THIS COMMONWEALTH IN ORDER TO FOSTER THE
25 ECONOMIC WELL-BEING OF THE COMMONWEALTH AND ITS PEOPLE.

26 (3) THE ECONOMY AND GENERAL WELFARE OF THE COMMONWEALTH
27 AND ITS PEOPLE, AS WELL AS THE ECONOMY AND GENERAL WELFARE OF
28 THE UNITED STATES, ARE RELATED TO THE PRESERVATION AND
29 DEVELOPMENT OF THE FLAG INDUSTRY IN THIS COMMONWEALTH AND IN
30 THE OTHER STATES OF THE UNITED STATES.

1 (B) DECLARATION.--THE GENERAL ASSEMBLY DECLARES IT TO BE THE
2 POLICY OF THE COMMONWEALTH AND ALL GOVERNMENT AGENCIES SHOULD,
3 AT ALL TIMES, AID AND PROMOTE THE DEVELOPMENT OF THE FLAG
4 INDUSTRY OF THE UNITED STATES IN ORDER TO STIMULATE AND IMPROVE
5 THE ECONOMIC WELL-BEING OF THE COMMONWEALTH AND ITS PEOPLE.

6 § 3763. DEFINITIONS.

7 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
8 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
9 CONTEXT CLEARLY INDICATES OTHERWISE:

10 "FLAG." ANY OF THE FOLLOWING:

11 (1) THE FLAG OF THE UNITED STATES, AS DEFINED IN 4
12 U.S.C. § 1 (RELATING TO FLAG; STRIPES AND STARS ON) AND THE
13 EXECUTIVE ORDERS ENTERED IN CONNECTION WITH THAT SECTION,
14 MADE OF FABRIC, CLOTH OR PAPER DISPLAYED FROM A STAFF OR
15 FLAGPOLE OR IN A WINDOW. THE TERM DOES NOT INCLUDE A
16 DEPICTION OR EMBLEM OF THE UNITED STATES FLAG MADE OF LIGHTS,
17 PAINT, ROOFING, SIDING, PAVING MATERIALS, FLORA OR BALLOONS
18 OR ANY OTHER SIMILAR BUILDING, LANDSCAPING OR DECORATIVE
19 COMPONENT.

20 (2) THE FLAG OF THE COMMONWEALTH, AS DESCRIBED IN
21 SECTION 1 OF THE ACT OF JUNE 13, 1907 (P.L.560, NO.373),
22 ENTITLED "AN ACT DESIGNATING THE OFFICIAL FLAG OF THE
23 COMMONWEALTH OF PENNSYLVANIA, AND DESCRIBING THE SAME;
24 PROVIDING FOR THE CARRYING OF SUCH FLAG BY THE REGIMENTS OF
25 THE NATIONAL GUARD OF PENNSYLVANIA; AUTHORIZING THE SECRETARY
26 OF THE COMMONWEALTH TO PROVIDE, AND HAVE DEPOSITED IN THE
27 OFFICE OF SECRETARY OF THE COMMONWEALTH, A MODEL OF SAID
28 FLAG, AND MAKING AN APPROPRIATION THEREFOR."

29 "UNITED STATES." THE UNITED STATES OF AMERICA AND ALL
30 TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION

1 OF THE UNITED STATES.

2 § 3764. POLICE POWERS.

3 THIS SUBCHAPTER IS AN EXERCISE OF THE POLICE POWERS OF THE
4 COMMONWEALTH FOR THE PROTECTION OF THE HEALTH, SAFETY AND
5 GENERAL WELFARE OF THE PEOPLE OF THIS COMMONWEALTH.

6 § 3765. CONTRACT PROVISIONS.

7 ALL COMMONWEALTH AGENCIES AND THE GENERAL ASSEMBLY, ITS
8 OFFICERS AND AGENCIES SHALL PROCURE ONLY FLAGS THAT ARE
9 MANUFACTURED IN THE UNITED STATES. A FLAG IS MANUFACTURED IN THE
10 UNITED STATES IF THE FABRIC, CLOTH OR PAPER IS WOVEN, DYED,
11 PRINTED OR OTHERWISE EMBEDDED INTO THE FINAL PRODUCT IN THE
12 UNITED STATES. CONTRACT DOCUMENTS FOR THE PROCUREMENT OF FLAGS
13 SHALL CONTAIN A PROVISION THAT THE FLAGS PROCURED BY THE
14 COMMONWEALTH AGENCY SHALL BE MANUFACTURED IN THE UNITED STATES.

15 § 3766. PAYMENT UNDER CONTRACT AND RECOVERY OF PAYMENTS.

16 A COMMONWEALTH AGENCY OR THE GENERAL ASSEMBLY, ITS OFFICERS
17 AND AGENCIES, MAY NOT AUTHORIZE, PROVIDE FOR OR MAKE A PAYMENT
18 TO A PERSON UNDER A CONTRACT CONTAINING THE PROVISIONS REQUIRED
19 BY SECTION 3765 (RELATING TO CONTRACT PROVISIONS) UNLESS THE
20 COMMONWEALTH AGENCY OR THE GENERAL ASSEMBLY, ITS OFFICERS AND
21 AGENCIES IS SATISFIED THAT THE PERSON HAS COMPLIED WITH THE
22 PROVISIONS. IF A COMMONWEALTH AGENCY OR THE GENERAL ASSEMBLY,
23 ITS OFFICERS AND AGENCIES DETERMINES THAT A PERSON WHO SUPPLIED
24 FLAGS TO THE AGENCY VIOLATED SECTION 3765, THE AGENCY MAY
25 RECOVER FROM THE PERSON A PAYMENT MADE BY THE COMMONWEALTH
26 AGENCY OR THE GENERAL ASSEMBLY, ITS OFFICERS AND AGENCIES FOR
27 THE FLAGS.

28 § 3767. PENALTY.

29 A PERSON WHO WILLFULLY VIOLATES THE PROVISIONS OF THIS
30 SUBCHAPTER MAY BE PROHIBITED BY THE COMMONWEALTH AGENCY OR THE

1 GENERAL ASSEMBLY, ITS OFFICERS AND AGENCIES FROM PARTICIPATION
2 IN CONTRACTS AWARDED BY THE COMMONWEALTH AGENCY OR THE GENERAL
3 ASSEMBLY, ITS OFFICERS AND AGENCIES FOR A PERIOD OF FIVE YEARS
4 FROM THE DATE OF THE DETERMINATION THAT A VIOLATION HAS
5 OCCURRED. THIS PENALTY MAY BE IN ADDITION TO THE WITHHOLDING OR
6 RECOVERY OF PAYMENTS UNDER SECTION 3766 (RELATING TO PAYMENT
7 UNDER CONTRACT AND RECOVERY OF PAYMENTS).

8 SECTION 2. THIS ACT SHALL APPLY TO THE PROCUREMENT OF FLAGS
9 OR CONTRACTS FOR THE PROCUREMENT OF FLAGS ENTERED INTO ON OR
10 AFTER THE EFFECTIVE DATE OF THIS ACT.

11 SECTION 3. ALL ACTS AND PARTS OF ACTS ARE REPEALED INsofar
12 AS THEY ARE INCONSISTENT WITH THIS ACT.

13 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.