

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2239 Session of
2003

INTRODUCED BY DALEY, O'BRIEN, BLAUM, DeWEESE, DALLY, DERMODY, COHEN, PHILLIPS, D. EVANS, STETLER, LEDERER, GEIST, BUXTON, MANN, CREIGHTON, TRUE, HUTCHINSON, CAPPELLI, LESCOVITZ, SHANER, GEORGE, McILHATTAN, McGILL, REED, BAKER, READSHAW, PISTELLA, PETRARCA, RUBLEY, FABRIZIO, HARRIS, CURRY, BARD, TIGUE, LEACH, HARHAI, McGEEHAN, BASTIAN, ROBERTS, ARMSTRONG, PALLONE, GERGELY, SOLOBAY, FAIRCHILD, KELLER, MARSICO, BELFANTI, WATERS, CRUZ, HORSEY, McCALL, WANSACZ, LaGROTTA, LYNCH, MELIO, MACKERETH, R. MILLER, WILT, NICKOL, PETRONE, STEIL, SEMMEL, STURLA, WALKO, BROWNE, McNAUGHTON, HERMAN, HARPER, SURRA, BEBKO-JONES, RAYMOND, SANTONI, GANNON, COLEMAN, WATSON, TANGRETTI, STABACK, SCHRODER, CRAHALLA, THOMAS, JAMES, HASAY, ROONEY, BUTKOVITZ, PAYNE, J. TAYLOR, HARHART, R. STEVENSON, J. EVANS, TRAVAGLIO, GODSHALL, KENNEY, HICKERNELL, WEBER, BUNT, DAILEY, FICHTER, BOYD, HESS, CAUSER, SATHER, KIRKLAND, MARKOSEK, BARRAR, FRANKEL, WHEATLEY, CIVERA, ADOLPH, STERN, CLYMER, CORRIGAN, McILHINNEY, EACHUS, GRUCELA, WRIGHT, B. SMITH, FREEMAN, GABIG, CALTAGIRONE, SAMUELSON, REICHLEY, HENNESSEY, HABAY, MAITLAND AND SAYLOR, DECEMBER 10, 2003

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 27, 2004

AN ACT

1 Amending the act of August 9, 1955 (P.L.323, No.130), entitled,
2 as amended, "An act relating to counties of the first, third,
3 fourth, fifth, sixth, seventh and eighth classes; amending,
4 revising, consolidating and changing the laws relating
5 thereto; relating to imposition of excise taxes by counties,
6 including authorizing imposition of an excise tax on the
7 rental of motor vehicles by counties of the first class; and
8 providing for regional renaissance initiatives," further
9 providing for qualifications, eligibility and compensation
10 for district attorneys; making an appropriation; and making
11 repeals.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

1 Section 1. Section 102 of the act of August 9, 1955
2 (P.L.323, No.130), known as The County Code, amended June 18,
3 1997 (P.L.179, No.18), is amended to read:

4 Section 102. Applicability.--(a) Except incidentally, as in
5 sections 108, 201, 210 [and 211], 211 and 1401 or as provided in
6 Article XXX, this act does not apply to counties of the first,
7 second A, or second classes.

8 (b) Except where otherwise specifically limited, this act
9 applies to all counties of the third, fourth, fifth, sixth,
10 seventh and eighth classes.

11 Section 2. Section 1401 of the act, amended June 16, 1972
12 (P.L.468, No.149) and November 23, 1994 (P.L.640, No.98), is
13 amended to read:

14 Section 1401. District Attorney; Qualifications;
15 Eligibility; Compensation.--(a) The district attorney shall be
16 a resident of the county, [learned in the law,] at least
17 [eighteen] twenty-five years of age, and a citizen of the United
18 States [and, except as otherwise provided in subsection (b) of
19 this section for counties of the seventh and eighth classes],
20 shall have been admitted to practice as an attorney before the
21 Supreme Court of this Commonwealth for at least one year prior
22 to taking the oath of office and shall have resided in the
23 county for which he is elected or appointed for two years next
24 preceding his election or appointment.

25 [(b) In counties of the seventh and eighth classes, the
26 district attorney shall have resided in the county for which he
27 is elected or appointed for one year next preceding his election
28 or appointment, and be a resident of such county.

29 (c) In counties of the third, fourth, fifth and sixth
30 classes, the district attorney shall have been admitted to

1 practice as an attorney before the Supreme or Superior Courts of
2 this Commonwealth for at least two years prior to the time for
3 taking the oath of office, or shall have been admitted to
4 practice before the Supreme or Superior Courts of this
5 Commonwealth for at least six months prior to the time for
6 taking the oath of office, and have been practicing law before a
7 court of record of this Commonwealth for at least five years.

8 (d) In counties of the seventh class, the district attorney
9 shall have been admitted to practice as an attorney before the
10 Supreme or Superior Courts of this Commonwealth for at least six
11 months prior to the time for taking the oath of office, and
12 shall have practiced before a court of record of this
13 Commonwealth for at least two years.

14 (e) In counties of the eighth class, the district attorney
15 shall have been admitted to practice as an attorney in the
16 Supreme or Superior Court of this Commonwealth prior to the time
17 for taking the oath of office, and shall have practiced law
18 before a court of record of this Commonwealth for eighteen
19 months prior to the time for taking the oath of office.]

20 (f) No district attorney shall be eligible [to] for a seat
21 in the Legislature or to any other office under the laws and
22 Constitution of the Commonwealth, excepting an office or
23 commission in the militia of the Commonwealth, during his
24 continuance in office.

25 (g) [The commissioners of any county may by ordinance fix
26 the services of the district attorney at full time. Such
27 determination may be made at any time, provided that the
28 determination shall not be made between the first day for the
29 circulation of nominating petitions for the office of district
30 attorney and January of the subsequent year. The president judge

1 of the court of common pleas of the judicial district and the
2 district attorney may make recommendations at any time to the
3 county commissioners on the advisability of full-time service by
4 the district attorney, but the same shall not be binding on
5 them.

6 When the determination by the county commissioners to require
7 a full-time district attorney becomes effective and operative,
8 he]

<—

9 ~~(1) Except as provided in paragraph (3), district attorneys~~
10 HE] DISTRICT ATTORNEYS of counties of the third, fourth, fifth, <—
11 sixth and seventh class shall be full time. In counties of the
12 eighth class, the district attorney shall be full time where the <—
13 president judge of the county court of common pleas certifies
14 that two or more ANY OF THE FOLLOWING APPLY: <—

15 (1) THE COMMISSIONERS OF THE COUNTY HAVE BY ORDINANCE FIXED
16 THE SERVICES OF THE DISTRICT ATTORNEY AT FULL TIME. AN ORDINANCE
17 UNDER THIS CLAUSE MAY NOT BE MADE BETWEEN THE FIRST DAY FOR THE
18 CIRCULATION OF NOMINATING PETITIONS FOR THE OFFICE OF DISTRICT
19 ATTORNEY AND JANUARY 1 OF THE SUBSEQUENT YEAR.

20 (2) THE PRESIDENT JUDGE OF THE COUNTY COURT OF COMMON PLEAS
21 ORDERS THAT THE OFFICE OF DISTRICT ATTORNEY SHALL BE FULL TIME.
22 UPON MOTION OF THE DISTRICT ATTORNEY, THE PRESIDENT JUDGE SHALL
23 CONDUCT A HEARING AND SHALL ISSUE AN ORDER ON THE ISSUE OF
24 WHETHER THE OFFICE OF DISTRICT ATTORNEY SHALL BE FULL TIME
25 WITHIN 180 DAYS OF THE FILING OF THE MOTION. THE ORDER MAY BE
26 APPEALED BY THE DISTRICT ATTORNEY OR THE COUNTY COMMISSIONERS IN
27 ACCORDANCE WITH THE RULES OF APPELLATE PROCEDURE. AN ORDER UNDER
28 THIS CLAUSE SHALL TAKE EFFECT IN 60 DAYS. AN ORDER UNDER THIS
29 CLAUSE SHALL BE MADE IF THE PRESIDENT JUDGE FINDS THAT TWO OR
30 MORE of the following factors are present in the county:

1 (i) the average caseload of felony, misdemeanor and juvenile
2 cases for the past five years has exceeded two hundred per year;

3 (ii) the average caseload for homicide cases for the past
4 five years has equaled or exceeded one per year;

5 (iii) the county has any State correctional facility,
6 juvenile detention facility, youth development center, youth
7 forestry camp, other licensed residential facility serving
8 children and youth, or mental health or mental retardation
9 facility or institution, with a population exceeding two hundred
10 fifty, or if the county has more than one such facility or
11 institution, the aggregate population of such facilities and
12 institutions exceeds two hundred fifty;

13 (iv) a major controlled substances transportation route
14 passes through the county;

15 (v) the average number of convictions under 75 Pa.C.S. §
16 3731 (relating to driving under influence of alcohol or
17 controlled substance) subject to the alcoholic ignition
18 interlock statutory provision requirements exceeds thirty per
19 year; or

20 (vi) the county constitutes a single and separate judicial
21 district.

22 ~~(2)~~ (H) A full-time district attorney shall be compensated <—
23 at one thousand dollars (\$1,000) lower than the compensation
24 paid to a judge of the court of common pleas in the respective
25 judicial district. [It is the legislative intent that all
26 provisions of this subsection requiring full-time service shall
27 be unenforceable until such time as the accompanying salary
28 provisions take effect.

29 Once the determination for a full-time district attorney is
30 made,†

~~(3) In a county where the office of district attorney is full time,~~ it shall not thereafter be changed except by referendum of the electorate of the said county. Such referendum may be instituted by the county commissioners or on petition by five per cent of the electors voting for the office of Governor in the last gubernatorial general election. Such referendum may be held at any election preceding the year in which the district attorney shall be elected. Such district attorney shall devote
ATTORNEY SHALL BE ELECTED. SUCH]

(I) IN A COUNTY WHERE THE OFFICE OF DISTRICT ATTORNEY IS FULL TIME, THE DISTRICT ATTORNEY SHALL DEVOTE full time to the office. The district attorney while in office, shall not derive any other income as a result of honorariums, profit shares or divisions of income from any firm with which the district attorney was associated prior to election. This limitation shall not be construed, however, to preclude payment of fees earned for legal work done prior to, but not concluded until after his election as THE EARLIER OF HIS [ELECTION] BEING MADE FULL TIME OR BEING SWORN IN AS A FULL-TIME district attorney. In addition the district attorney shall not engage in any private practice and must be completely disassociated with any firm with which the district attorney was affiliated prior to [election, nor shall the] THE EARLIER OF BEING MADE FULL TIME OR BEING SWORN IN AS A FULL-TIME DISTRICT ATTORNEY. THE district attorney-elect MAY NOT accept any civil or criminal cases after being elected to the office. [Furthermore, the district attorney shall be subject to the canons of ethics as applied to judges in the courts of common pleas of this Commonwealth in so far as such canons apply to salaries, full-time duties and conflicts of interest.

1 Any complaint by a citizen of the county that a full-time
2 district attorney may be in violation of this section shall be
3 made to the Disciplinary Board of the Supreme Court of
4 Pennsylvania, for determination as to the merit of the
5 complaint. If any substantive basis is found, the board shall
6 proceed forthwith in the manner prescribed by the rules of the
7 Supreme Court and make such recommendation for disciplinary
8 action as it deems advisable, provided, however, that if the
9 Supreme Court deems the violation so grave as to warrant removal
10 from office, the prothonotary of the said court shall transmit
11 its findings to the Speaker of the House of Representatives for
12 such action as the House deems advisable under Article VI of the
13 Constitution of the Commonwealth of Pennsylvania.

14 Where no such determination to require a full-time district
15 attorney is made, the district attorney shall be permitted to
16 have an outside practice.

17 Notwithstanding the provision of any other statute, the
18 annual salaries of part-time district attorneys shall be as
19 follows:]

20 ~~(4)~~ (J) Each part-time district attorney holding office on <—
21 the date this paragraph SUBSECTION becomes effective shall <—
22 become full time sixty days thereafter, unless the district
23 attorney elects not to assume full-time status for the remainder
24 of the district attorney's current term of office. The election
25 shall be in writing and delivered to the chairman of the county
26 commissioners, the Secretary of Revenue and the State Treasurer.
27 Where a district attorney elects not to assume full-time status,
28 the district attorney shall be permitted to have an outside
29 practice and shall be compensated, notwithstanding the
30 provisions of any other statutes, as follows: In counties of the

1 third or fourth class, the salary shall be sixty per cent of the
2 annual salary payable to the judge of the court of common pleas
3 of the judicial district of the county; in a county of the fifth
4 or sixth class, the salary shall be fifty per cent of the annual
5 salary payable to the judge of the court of common pleas of the
6 judicial district of the county; and in a county of the seventh
7 or eighth class, the salary shall be forty per cent of the
8 annual salary payable to the judge of the court of common pleas
9 of the judicial district of the county.

10 ~~(5)~~ (K) Subject to the provisions of ~~paragraph (1)~~ <—
11 SUBSECTION (G), any district attorney who is part time at the <—
12 time of the district attorney's election CHOOSES TO REMAIN PART <—
13 TIME UNDER SUBSECTION (J) shall become full time on the date set
14 forth by statute for the administration of the oath of office
15 AFTER THE NEXT ELECTION FOR THE OFFICE OF DISTRICT ATTORNEY. <—

16 ~~(h)~~ (L) In the event of a vacancy in the office of district <—
17 attorney, the person appointed to serve the remainder of the
18 unexpired term shall be bound by the election made in subsection
19 ~~(g)~~(4) (J) for the remainder of said term. <—

20 ~~(i)~~ (M) A district attorney shall be subject to the Rules of <—
21 Professional Conduct and the canons of ethics as applied to
22 judges in the courts of common pleas of this Commonwealth
23 insofar as such canons apply to salaries, full-time duties and
24 conflicts of interest. Any complaint by a citizen of the county
25 that a full-time district attorney may be in violation of this
26 section shall be made to the Disciplinary Board of the Supreme
27 Court of Pennsylvania. If any substantive basis is found, the
28 board shall proceed forthwith in the manner prescribed by the
29 rules of the Supreme Court and make such recommendation for
30 disciplinary action as it deems advisable; provided, however,

1 that if the Supreme Court deems the violation so grave as to
2 warrant removal from office, the prothonotary of the Supreme
3 Court shall transmit its findings to the Speaker of the House of
4 Representatives for such action as the House of Representatives
5 deems appropriate under Article VI of the Constitution of
6 Pennsylvania.

7 ~~(j)~~ (N) The Commonwealth shall ANNUALLY reimburse each <—
8 county with a full-time district attorney an amount equal to
9 ~~sixty five percent (65%) of the salary of a judge of the court~~ <—
10 ~~of common pleas. SIXTY-FIVE PER CENT OF THE DISTRICT ATTORNEY'S~~ <—
11 SALARY.

12 Section 3. The sum of ~~\$5,000,000~~, \$5,002,000 or as much <—
13 thereof as may be necessary, is hereby appropriated to the
14 ~~Attorney General~~ SECRETARY OF THE BUDGET for the fiscal year <—
15 July 1, 2004, to June 30, 2005, to carry out the provisions of
16 section ~~1401(j)~~ 1401(N) of the act. <—

17 Section 4. The following acts and parts of acts are
18 repealed:

19 Act of April 12, 1866 (P.L.103, No.91), entitled "An act
20 relative to the fees of district attorney, in certain counties
21 of this commonwealth."

22 Act of March 14, 1905 (P.L.37, No.19), entitled "An act to
23 fix the salaries of district attorneys, and providing for the
24 appointment of assistant district attorneys, in the several
25 counties of this Commonwealth having over eight hundred thousand
26 inhabitants; prescribing the powers and duties, and fixing the
27 salaries of the said assistant district attorneys."

28 Act of April 17, 1905 (P.L.170, No.125), entitled "An act
29 providing that the district attorneys, in all counties whose
30 population does not exceed one hundred and fifty thousand, shall

1 be paid a salary, and fixing the same, which shall be in lieu of
2 all fees, and in full compensation for their services; and
3 providing for the appointment of assistant district attorneys in
4 said counties, and for the compensation of the same; and
5 providing that the fees heretofore allowed the district
6 attorneys upon indictments shall remain in amount as heretofore,
7 but shall hereafter be as part of the costs, for the use and
8 benefit of the proper county."

9 Act of July 9, 1919 (P.L.795, No.329), entitled "An act to
10 fix the salaries of district attorneys in counties having a
11 population of less than one million inhabitants."

12 Section 1401 of the act of July 28, 1953 (P.L.723, No.230),
13 known as the Second Class County Code.

14 Section 5. This act shall take effect July 1, 2004.