

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1648 Session of  
2005

INTRODUCED BY O'BRIEN, DALEY, ADOLPH, ARGALL, BAKER, BALDWIN, BARRAR, BASTIAN, BEBKO-JONES, BELFANTI, BLAUM, BOYD, BROWNE, BUNT, BUTKOVITZ, BUXTON, CALTAGIRONE, CAPPELLI, CAUSER, CIVERA, CLYMER, COHEN, CORRIGAN, COSTA, CRAHALLA, CREIGHTON, CURRY, DALLY, DENLINGER, DERMODY, DeWEESE, DIGIROLAMO, EACHUS, D. EVANS, J. EVANS, FABRIZIO, FAIRCHILD, FICHTER, FLEAGLE, FLICK, FRANKEL, FREEMAN, GABIG, GANNON, GEIST, GEORGE, GERBER, GERGELY, GODSHALL, GOODMAN, GRELL, HANNA, HARHAI, HARHART, HARPER, HARRIS, HASAY, HENNESSEY, HERMAN, HESS, HICKERNELL, HUTCHINSON, JAMES, KAUFFMAN, W. KELLER, KENNEY, KILLION, LaGROTTA, LEACH, LEDERER, LEH, LESCOVITZ, LEVDANSKY, MACKERETH, MAITLAND, MANN, MARKOSEK, MARSICO, McCALL, McGEEHAN, MCGILL, McILHATTAN, McILHINNEY, McNAUGHTON, MELIO, MICOZZIE, R. MILLER, NAILOR, NICKOL, O'NEILL, PALLONE, PAYNE, PETRARCA, PETRI, PETRONE, PHILLIPS, PISTELLA, PRESTON, QUIGLEY, RAPP, RAYMOND, READSHAW, REED, REICHLEY, ROBERTS, ROONEY, SAMUELSON, SATHER, SAYLOR, SCHRODER, SEMMEL, SHANER, SHAPIRO, B. SMITH, SOLOBAY, STABACK, STEIL, STERN, STETLER, R. STEVENSON, STURLA, SURRA, TANGRETTI, E. Z. TAYLOR, J. TAYLOR, THOMAS, TIGUE, TRUE, WALKO, WANSACZ, WATERS, WATSON, WHEATLEY, WILT AND WRIGHT, JUNE 7, 2005

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 7, 2005

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; and making repeals.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 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), June 24, 1976 (P.L.443, No.107) and November  
13   23, 1994 (P.L.640, No.98), is 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] District attorneys of counties of the third, fourth, fifth,  
9 sixth and seventh class shall be full time. In counties of the  
10 eighth class, the district attorney shall be full time where any  
11 of the following apply:

12 (1) The commissioners of the county have by ordinance fixed  
13 the services of the district attorney at full time. An ordinance  
14 under this clause may not be made between the first day for the  
15 circulation of nominating petitions for the office of district  
16 attorney and January 1 of the subsequent year.

17 (2) The president judge of the county court of common pleas  
18 orders that the office of district attorney shall be full time.  
19 Upon motion of the district attorney, the president judge shall  
20 conduct a hearing and shall issue an order on the issue of  
21 whether the office of district attorney shall be full time  
22 within 180 days of the filing of the motion. The order may be  
23 appealed by the district attorney or the county commissioners in  
24 accordance with the rules of appellate procedure. An order under  
25 this clause shall take effect in 60 days. An order under this  
26 clause directing that the office of district attorney be full  
27 time shall be made if the president judge finds that two or more  
28 of the following factors are present in the county:

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

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

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

11     (iv) a major controlled substances transportation route  
12 passes through the county;

13     (v) the average number of convictions under 75 Pa.C.S. §  
14 3802 (relating to driving under influence of alcohol or  
15 controlled substance) or the former 75 Pa.C.S. § 3731 (relating  
16 to driving under influence of alcohol or controlled substance)  
17 subject to the alcoholic ignition interlock statutory provision  
18 requirements exceeds thirty per year; or

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

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

28     Once the determination for a full-time district attorney is  
29 made, it shall not thereafter be changed except by referendum of  
30 the electorate of the said county. Such referendum may be

1 instituted by the county commissioners or on petition by five  
2 per cent of the electors voting for the office of Governor in  
3 the last gubernatorial general election. Such referendum may be  
4 held at any election preceding the year in which the district  
5 attorney shall be elected. Such]

6 (i) In a county where the office of district attorney is  
7 full time, the district attorney shall devote full time to the  
8 office. The district attorney while in office, shall not derive  
9 any other income as a result of honorariums, profit shares or  
10 divisions of income from any firm with which the district  
11 attorney was associated prior to election. This limitation shall  
12 not be construed, however, to preclude payment of fees earned  
13 for legal work done prior to, but not concluded until after the  
14 earlier of his [election] being made full time or being sworn in  
15 as a full-time district attorney. In addition the district  
16 attorney shall not engage in any private practice and must be  
17 completely disassociated with any firm with which the district  
18 attorney was affiliated prior to [election, nor shall the] the  
19 earlier of being made full time or being sworn in as a full-time  
20 district attorney. The district attorney-elect may not accept  
21 any civil or criminal cases after being elected to the office.  
22 [Furthermore, the district attorney shall be subject to the  
23 canons of ethics as applied to judges in the courts of common  
24 pleas of this Commonwealth in so far as such canons apply to  
25 salaries, full-time duties and conflicts of interest.

26 Any complaint by a citizen of the county that a full-time  
27 district attorney may be in violation of this section shall be  
28 made to the Disciplinary Board of the Supreme Court of  
29 Pennsylvania, for determination as to the merit of the  
30 complaint. If any substantive basis is found, the board shall

1 proceed forthwith in the manner prescribed by the rules of the  
2 Supreme Court and make such recommendation for disciplinary  
3 action as it deems advisable, provided, however, that if the  
4 Supreme Court deems the violation so grave as to warrant removal  
5 from office, the prothonotary of the said court shall transmit  
6 its findings to the Speaker of the House of Representatives for  
7 such action as the House deems advisable under Article VI of the  
8 Constitution of the Commonwealth of Pennsylvania.

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

12 Notwithstanding the provision of any other statute, the  
13 annual salaries of part-time district attorneys shall be as  
14 follows:]

15 (j) Each part-time district attorney holding office on the  
16 effective date of this subsection shall become a full-time  
17 district attorney sixty days thereafter, unless the district  
18 attorney elects not to assume full-time status for the remainder  
19 of the district attorney's current term of office. The election  
20 shall be in writing and delivered to the chairman of the county  
21 commissioners, the Secretary of Revenue and the State Treasurer.  
22 Where a district attorney elects not to assume full-time status,  
23 the district attorney shall be permitted to have an outside  
24 practice and shall be compensated, notwithstanding the  
25 provisions of any other statutes, as follows: In counties of the  
26 third or fourth class, the salary shall be sixty per cent of the  
27 annual salary payable to the judge of the court of common pleas  
28 of the judicial district of the county; in a county of the fifth  
29 or sixth class, the salary shall be fifty per cent of the annual  
30 salary payable to the judge of the court of common pleas of the

1 judicial district of the county; and in a county of the seventh  
2 or eighth class, the salary shall be forty per cent of the  
3 annual salary payable to the judge of the court of common pleas  
4 of the judicial district of the county.

5 (k) Subject to the provisions of subsection (g), any  
6 district attorney who chooses to remain part time under  
7 subsection (j) shall become full time on the date set forth by  
8 statute for the administration of the oath of office after the  
9 next election for the office of district attorney.

10 (l) In the event of a vacancy in the office of district  
11 attorney, the person appointed to serve the remainder of the  
12 unexpired term shall be bound by the election made in subsection  
13 (j) for the remainder of said term.

14 (m) A district attorney shall be subject to the Rules of  
15 Professional Conduct and the canons of ethics as applied to  
16 judges in the courts of common pleas of this Commonwealth  
17 insofar as such canons apply to salaries, full-time duties and  
18 conflicts of interest. Any complaint by a citizen of the county  
19 that a full-time district attorney may be in violation of this  
20 section shall be made to the Disciplinary Board of the Supreme  
21 Court of Pennsylvania. If any substantive basis is found, the  
22 board shall proceed forthwith in the manner prescribed by the  
23 rules of the Supreme Court and make such recommendation for  
24 disciplinary action as it deems advisable; provided, however,  
25 that if the Supreme Court deems the violation so grave as to  
26 warrant removal from office, the prothonotary of the Supreme  
27 Court shall transmit its findings to the Speaker of the House of  
28 Representatives for such action as the House of Representatives  
29 deems appropriate under Article VI of the Constitution of  
30 Pennsylvania.



1     (n) The Commonwealth shall annually reimburse each county  
2     with a full-time district attorney an amount equal to sixty-five  
3     per cent of the district attorney's salary.

4     Section 3. The following acts and parts of acts are  
5     repealed:

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

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

15    Act of April 17, 1905 (P.L.170, No.125), entitled "An act  
16    providing that the district attorneys, in all counties whose  
17    population does not exceed one hundred and fifty thousand, shall  
18    be paid a salary, and fixing the same, which shall be in lieu of  
19    all fees, and in full compensation for their services; and  
20    providing for the appointment of assistant district attorneys in  
21    said counties, and for the compensation of the same; and  
22    providing that the fees heretofore allowed the district  
23    attorneys upon indictments shall remain in amount as heretofore,  
24    but shall hereafter be as part of the costs, for the use and  
25    benefit of the proper county."

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

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

1       Section 4.   This act shall take effect July 1, 2005, or  
2 immediately, whichever is later.