

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 565 Session of
2005

INTRODUCED BY LEMMOND, RHOADES, PICCOLA, MADIGAN, STACK,
D. WHITE, ROBBINS, TOMLINSON, KASUNIC, LAVALLE, COSTA,
WONDERLING, PUNT, RAFFERTY, ORIE, WOZNIAK, LOGAN, FUMO,
SCARNATI, ARMSTRONG, CONTI, MUSTO, FERLO, O'PAKE, THOMPSON,
WENGER, KITCHEN, PILEGGI, BOSCOLA, GREENLEAF, STOUT,
TARTAGLIONE AND WAUGH, APRIL 6, 2005

SENATOR ERICKSON, LOCAL GOVERNMENT, AS AMENDED, JUNE 14, 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; ~~making an appropriation~~ and making <—
11 repeals.

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

14 Section 1. Section 102 of the act of August 9, 1955
15 (P.L.323, No.130), known as The County Code, amended June 18,
16 1997 (P.L.179, No.18), is amended to read:

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

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

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

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

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

22 (c) In counties of the third, fourth, fifth and sixth
23 classes, the district attorney shall have been admitted to
24 practice as an attorney before the Supreme or Superior Courts of
25 this Commonwealth for at least two years prior to the time for
26 taking the oath of office, or shall have been admitted to
27 practice before the Supreme or Superior Courts of this
28 Commonwealth for at least six months prior to the time for
29 taking the oath of office, and have been practicing law before a
30 court of record of this Commonwealth for at least five years.

1 (d) In counties of the seventh class, the district attorney
2 shall have been admitted to practice as an attorney before the
3 Supreme or Superior Courts of this Commonwealth for at least six
4 months prior to the time for taking the oath of office, and
5 shall have practiced before a court of record of this
6 Commonwealth for at least two years.

7 (e) In counties of the eighth class, the district attorney
8 shall have been admitted to practice as an attorney in the
9 Supreme or Superior Court of this Commonwealth prior to the time
10 for taking the oath of office, and shall have practiced law
11 before a court of record of this Commonwealth for eighteen
12 months prior to the time for taking the oath of office.]

13 (f) No district attorney shall be eligible [to] for a seat
14 in the Legislature or to any other office under the laws and
15 Constitution of the Commonwealth, excepting an office or
16 commission in the militia of the Commonwealth, during his
17 continuance in office.

18 (g) [The commissioners of any county may by ordinance fix
19 the services of the district attorney at full time. Such
20 determination may be made at any time, provided that the
21 determination shall not be made between the first day for the
22 circulation of nominating petitions for the office of district
23 attorney and January of the subsequent year. The president judge
24 of the court of common pleas of the judicial district and the
25 district attorney may make recommendations at any time to the
26 county commissioners on the advisability of full-time service by
27 the district attorney, but the same shall not be binding on
28 them.

29 When the determination by the county commissioners to require
30 a full-time district attorney becomes effective and operative,

1 he] District attorneys of counties of the third, fourth, fifth,
2 sixth and seventh class shall be full time. In counties of the
3 eighth class, the district attorney shall be full time where any
4 of the following apply:

5 (1) The commissioners of the county have by ordinance fixed
6 the services of the district attorney at full time. An ordinance
7 under this clause may not be made between the first day for the
8 circulation of nominating petitions for the office of district
9 attorney and January 1 of the subsequent year.

10 (2) The president judge of the county court of common pleas
11 orders that the office of district attorney shall be full time.
12 Upon motion of the district attorney, the president judge shall
13 conduct a hearing and shall issue an order whether the office of
14 district attorney shall be full time within 180 days of the
15 filing of the motion. The order may be appealed by the district
16 attorney or the county commissioners in accordance with the
17 rules of appellate procedure. An order under this clause shall
18 take effect in 60 days. An order under this clause DIRECTING
19 THAT THE OFFICE OF DISTRICT ATTORNEY BE FULL TIME shall be made
20 if the president judge finds that two or more of the following
21 factors are present in the county:

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

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

26 (iii) the county has any State correctional facility,
27 juvenile detention facility, youth development center, youth
28 forestry camp, other licensed residential facility serving
29 children and youth, or mental health or mental retardation
30 facility or institution, with a population exceeding two hundred

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fifty, or if the county has more than one such facility or institution, the aggregate population of such facilities and institutions exceeds two hundred fifty;

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

(v) the average number of convictions under 75 PA.C.S. § 3802 (RELATING TO DRIVING UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE) OR THE FORMER 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) subject to the alcoholic ignition interlock statutory provision requirements exceeds thirty per year; or

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

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

Once the determination for a full-time district attorney is made, 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]

(i) In a county where the office of district attorney is full time, the district attorney shall devote full time to the

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

19 Any complaint by a citizen of the county that a full-time
20 district attorney may be in violation of this section shall be
21 made to the Disciplinary Board of the Supreme Court of
22 Pennsylvania, for determination as to the merit of the
23 complaint. If any substantive basis is found, the board shall
24 proceed forthwith in the manner prescribed by the rules of the
25 Supreme Court and make such recommendation for disciplinary
26 action as it deems advisable, provided, however, that if the
27 Supreme Court deems the violation so grave as to warrant removal
28 from office, the prothonotary of the said court shall transmit
29 its findings to the Speaker of the House of Representatives for
30 such action as the House deems advisable under Article VI of the

1 Constitution of the Commonwealth of Pennsylvania.

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

5 Notwithstanding the provision of any other statute, the
6 annual salaries of part-time district attorneys shall be as
7 follows:]

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

28 (k) Subject to the provisions of subsection (g), any
29 district attorney who chooses to remain part time under
30 subsection (j) shall become full time on the date set forth by

1 statute for the administration of the oath of office after the
2 next election for the office of district attorney.

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

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

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

27 ~~Section 3. The sum of \$5,002,000, or as much thereof as may~~ <—
28 ~~be necessary, is hereby appropriated to the Secretary of the~~
29 ~~Budget for the fiscal year July 1, 2005, to June 30, 2006, to~~
30 ~~carry out the provisions of section 1401(n) of the act.~~

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

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

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

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

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

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

~~Section 5. This act shall take effect July 1, 2005, or~~

~~immediately, whichever is later.~~

SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

1 (1) THE ADDITION OF SECTION 1401(N) OF THE ACT SHALL
2 TAKE EFFECT JANUARY 2, 2006.

3 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

4 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT NOVEMBER
5 3, 2005.