

No. 2005-57

AN ACT

SB 565

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

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

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

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

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

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

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

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

(c) In counties of the third, fourth, fifth and sixth classes, the district attorney shall have been admitted to practice as an attorney before the Supreme or Superior Courts of this Commonwealth for at least two years prior to the time for taking the oath of office, or shall have been admitted to practice before the Supreme or Superior Courts of this Commonwealth for at least six months prior to the time for taking the

oath of office, and have been practicing law before a court of record of this Commonwealth for at least five years.

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

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

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

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

When the determination by the county commissioners to require a full-time district attorney becomes effective and operative, he] *In counties of the eighth class, the district attorney shall be full time where any of the following apply:*

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

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

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

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

(iii) the county has any State correctional facility, juvenile detention facility, youth development center, youth forestry camp, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution, with a population exceeding two hundred 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) In counties of the third, fourth, fifth, sixth and seventh class:

(1) Each part-time district attorney holding office on the effective date of this subsection whose term expires January 7, 2008, shall become full time on January 2, 2006, if, after exercising due diligence in conducting an assessment of the best interests of public safety and the administration of criminal justice in the county, the part-time district attorney provides written notice to the chairman of the county commissioners, the Secretary of Revenue and the State Treasurer, no sooner than December 1, 2005, and no later than December 30, 2005, of the part-time district attorney's choice to serve as a full-time district attorney. Where a part-time district attorney holding office on the effective date of this act does not provide such notice, the office of district attorney shall remain part time for the remainder of the current term of office.

(2) A person who has been elected to the office of district attorney in a county where the district attorney is part time and whose term commences on January 2, 2006, shall, upon taking the oath of office, be a full-time district attorney if, after exercising due diligence in conducting an assessment of the best interests of public safety and the administration of criminal justice in the county, the district attorney-elect has provided written notice to the chairman of the county commissioners, the Secretary of Revenue and the State Treasurer no sooner than December 1, 2005, and no later than December 30, 2005, of the district attorney-elect's choice to serve as a full-time district attorney. Where the district attorney-elect does not provide such notice, the office of district attorney shall remain part time for the entire term of office commencing January 2, 2006.

(3) A person seeking election or re-election as district attorney in a county where the office of district attorney is a part-time position after January 2, 2006, shall, upon election and taking the oath of office, become a full-time district attorney if, prior to the deadline for filing nomination petitions or papers, the person has provided written notice to the chairman of the county commissioners, the Secretary of Revenue and the State Treasurer of the person's choice to serve as a full-time district attorney. Where the person does not provide such notice, the office of district attorney shall remain part time for the entire term of office.

(i) Once the office of district attorney becomes full time, it shall not thereafter be changed.

(j) 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]

(k) 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 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.

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

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

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

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

(l) A part-time district attorney may have an outside practice and shall be compensated, notwithstanding the provisions of any other statutes, as follows: In counties of the third or fourth class, the salary shall be sixty per cent of the annual salary payable to the judge of the court of common pleas of the judicial district of the county; in a county of the fifth or sixth class, the salary shall be fifty per cent of the annual salary payable to the judge of the court of common pleas of the judicial district of the county; and in a county of the seventh or eighth class, the salary shall be forty per cent of the annual salary payable to the judge of the court of common pleas of the judicial district of the county.

(m) Except as provided in subsection (g), any office of district attorney that is part time on January 2, 2012, shall become full time as of that date.

(n) In the event of a vacancy in the office of district attorney, the person appointed to serve the remainder of the unexpired term shall be bound by the election made in subsection (h) for the remainder of said term.

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

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

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

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

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

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

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

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

Section 4. This act shall take effect as follows:

- (1) The addition of section 1401(p) of the act shall take effect January 2, 2006.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 14th day of July, A.D. 2005.

EDWARD G. RENDELL