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4 **Substitute for HOUSE BILL No. 2049**

5  
6 By Committee on Corrections and Juvenile Justice

7  
8 2-26

9  
10 AN ACT concerning district attorneys; relating to the creation of the  
11 office of district attorney in certain judicial districts; amending K.S.A.  
12 22a-106 and K.S.A. ~~2002~~ 2003 Supp. 22a-105 and 22a-107 and re-  
13 pealing the existing sections.

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15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) An office of district attorney may be established  
17 in a judicial district in the following manner.

18 (b) Each county commission in a judicial district may pass a resolution  
19 submitting to the qualified electors in each judicial district the proposition  
20 of creating the office of district attorney in such judicial district. If all  
21 county commissions in each of the counties in the judicial district pass  
22 such a resolution, the secretary of state shall place on the ballot at the  
23 next election in which all of the qualified electors of the judicial district  
24 are entitled to vote the proposition stated in subsection (d).

25 (c) The secretary of state shall place on the ballot at the next election  
26 in which all of the qualified electors of the judicial district are entitled to  
27 vote the proposition stated in subsection (d), if the secretary of state  
28 receives a petition requesting an election on the proposition, signed by  
29 not less than 5% of the qualified electors in each of the counties in the  
30 judicial district. The following shall appear on the petition:

31 "We request an election to determine whether the present method of  
32 selecting county attorneys in this judicial district shall be discontinued  
33 and replaced in this judicial district with the office of district attorney,  
34 which shall be elected by the voters of this judicial district."

35 (d) The proposition on the ballot at an election held pursuant to this  
36 section for the adoption of the office of district attorney in the judicial  
37 district shall be as follows:

38 "The present method of selecting county attorneys in this judicial dis-  
39 trict shall be discontinued and there is hereby adopted in this judicial  
40 district the office of district attorney, which shall be elected by the voters  
41 of this judicial district." Provision shall be made for marking the question  
42 "Yes" or "No."

43 (e) If a majority of the votes cast and counted in each county in the

1 judicial district on the proposition is in favor of the establishment of the  
2 office of district attorney, the provisions of this act shall govern the se-  
3 lection of the district attorney in the judicial district. If a majority of the  
4 votes cast and counted in any county in the judicial district is against the  
5 establishment of the office of district attorney, the offices of the county  
6 attorneys shall continue.

7 (f) It shall be the duty of the state board of canvassers to canvass the  
8 votes in each judicial district voting on the proposition of the establish-  
9 ment of the office of district attorney in the judicial district in the manner  
10 prescribed by K.S.A. 25-3206, and amendments thereto. Upon comple-  
11 tion of the final canvass and certification of the results, the secretary of  
12 state shall transmit a copy of the results to the board of county commis-  
13 sioners of each county in such judicial district.

14 New Sec. 2. (a) Whenever the majority of the votes cast and counted  
15 in each county in the judicial district on the proposition is in favor of the  
16 establishment of the office of district attorney pursuant to section 1, and  
17 amendments thereto, there is hereby established the office of district  
18 attorney in such judicial district.

19 (b) Commencing with the next general election following the certi-  
20 fication date of the election on the office of district attorney, and at the  
21 general election every four years thereafter, a district attorney shall be  
22 elected in the judicial district for a four-year term, commencing on the  
23 second Monday in January next following the election. Upon such date,  
24 the offices of county attorney in such judicial district shall be and is hereby  
25 abolished.

26 (c) The district attorney authorized by this section is hereby declared  
27 to be an executive officer of the judicial district in which such attorney is  
28 elected, with the office constituting a separate entity within the district  
29 for administrative purposes. In no event shall the district attorney be  
30 deemed an officer of any county.

31 (d) Before entering upon the duties of the office, the district attorney  
32 shall take the oath of office required by law for public officers and shall  
33 execute a good and sufficient surety bond in the manner prescribed by  
34 K.S.A. 75-4101 *et seq.*, and amendments thereto.

35 (e) If the office of district attorney is established pursuant to this  
36 section, the district attorney, or the district attorney's deputies or assis-  
37 tants shall maintain office hours of not less than 60 hours per month in  
38 each city which is the county seat of each county in the judicial district.

39 (f) The provisions of K.S.A. 22a-102, 22a-103, 22a-104, 22a-105, 22a-  
40 106 and 22a-107, and amendments thereto, shall be applicable to the  
41 office of district attorney established pursuant to sections 1 and 2, and  
42 amendments thereto.

43 (g) If the office of district attorney is established pursuant to this

1 section, the board of county commissioners of each county of such judicial  
2 district shall enter into an interlocal cooperation agreement for the pur-  
3 pose of jointly and cooperatively performing any of the services, duties,  
4 functions, activities, obligations or responsibilities which are authorized  
5 or required by law to be performed by the counties for an office of district  
6 attorney. The following conditions shall apply to such interlocal cooper-  
7 ation agreements:

8 (1) A district attorney interlocal cooperation agreement shall establish  
9 a board of directors which shall be responsible for administering the joint  
10 or cooperative undertaking. The agreement shall specify the organization  
11 and composition of and manner of appointment to the board of directors.  
12 Only members of boards of county commissioners of counties in the ju-  
13 dicial district shall be eligible for membership on the board of directors.  
14 Each county shall hold equal representation on the board. The terms of  
15 office of members of the board of directors shall expire concurrently with  
16 their terms as board of county commission members. Vacancies in the  
17 membership of the board of directors shall be filled within 30 days from  
18 the date of the vacancy in the manner specified in the agreement.

19 (2) Pursuant to K.S.A. 22a-105 and 22a-106, and amendments  
20 thereto, a district attorney interlocal cooperation agreement shall provide  
21 for payment of salaries, office expenses, office space and dispute  
22 resolution.

23 (3) A district attorney interlocal cooperation agreement shall be sub-  
24 ject to change or termination by the legislature.

25 (4) The duration of a district attorney interlocal cooperation agree-  
26 ment for joint or cooperative action in performing any of the services,  
27 duties, functions, activities, obligations or responsibilities which are au-  
28 thorized or required by law to be performed by the counties for an office  
29 of district attorney, shall be for a term of four years and shall be rene-  
30 gotiated and reviewed at the end of such term.

31 (5) The duration of the office of district attorney shall be perpetual  
32 unless the voters of the judicial district vote to terminate the office of  
33 district attorney in the manner described in section 3, and amendments  
34 thereto.

35 (6) The district attorney interlocal cooperation agreement shall spec-  
36 ify the method or methods for disposing of the property acquired by the  
37 office of district attorney in the event that such office is terminated in the  
38 manner described in section 3, and amendments thereto.

39 (h) As used in this section: “District attorney interlocal cooperation  
40 agreement” means an agreement which is entered into by the boards of  
41 county commissioners of each county within each judicial district which  
42 has established the office of district attorney in such judicial district pur-  
43 suant to the provisions of this section.

1 New Sec. 3. (a) An office of district attorney may be terminated in  
2 a judicial district in the following manner.

3 (b) Each county commission may pass a resolution submitting to the  
4 qualified electors in each judicial district the proposition of terminating  
5 the office of district attorney in such judicial district. If all county com-  
6 missions in each of the counties in the judicial district pass such a reso-  
7 lution, the secretary of state shall place on the ballot at the next election  
8 in which all of the qualified electors of the judicial district are entitled to  
9 vote the proposition stated in subsection (d).

10 (c) The secretary of state shall place on the ballot at the next election  
11 in which all of the qualified electors of the judicial district are entitled to  
12 vote the proposition stated in subsection (d), if the secretary of state  
13 receives a petition requesting an election on the proposition, signed by  
14 not less than 5% of the qualified electors in each of the counties in the  
15 judicial district. The following shall appear on the petition:

16 “We request an election to determine whether to terminate the office  
17 of district attorney in the judicial district and replace it with offices of  
18 county attorneys in each county in the judicial district.”

19 (d) The proposition on the ballot at an election held pursuant to this  
20 section to terminate the office of district attorney in the judicial district  
21 shall be as follows:

22 “The office of district attorney in this judicial district shall be termi-  
23 nated and replaced with offices of county attorneys in each county in the  
24 judicial district, elected by the voters of each county.” Provision shall be  
25 made for marking the question “Yes” or “No.”

26 (e) If a majority of votes cast and counted in each county in the  
27 judicial district on the proposition is in favor of terminating the office of  
28 district attorney in the judicial district, the counties shall return to electing  
29 the offices of county attorney in each county. If the majority of the votes  
30 cast and counted in each county in the judicial district is against termi-  
31 nating the office of district attorney in the judicial district, the office of  
32 district attorney shall continue.

33 (f) It shall be the duty of the state board of canvassers to canvass the  
34 votes in each judicial district voting on the proposition of terminating the  
35 office of district attorney in the judicial district in the manner prescribed  
36 by K.S.A. 25-3206, and amendments thereto. Upon completion of the  
37 final canvass and certification of the results, the secretary of state shall  
38 transmit a copy of the results to the board of county commissioners of  
39 each county in such judicial district.

40 Sec. 4. K.S.A. ~~2002~~ **2003** Supp. 22a-105 is hereby amended to read  
41 as follows: 22a-105. Each of the district attorneys elected ~~under this act~~  
42 *in judicial districts 3, 7, 10, 18, 27 and 29* shall receive an annual salary  
43 in the amount of no less than the salary provided for district judges in

1 K.S.A. 75-3120g, and amendments thereto. *Each of the district attorneys*  
2 *elected pursuant to section 2, and amendments thereto, shall receive an*  
3 *annual salary in the amount of no less than 80% of the salary provided*  
4 *for district judges in K.S.A. 75-3120g, and amendments thereto.* The salary  
5 of each district attorney shall be paid by the county or counties comprising  
6 the judicial district in which the district attorney is elected in equal  
7 monthly installments and in the manner ~~county officers and employees~~  
8 ~~are paid~~ *as provided in the district attorney interlocal cooperation agree-*  
9 *ment. The counties shall ratably contribute to the district attorney's salary*  
10 *based on the population of the county.* The district attorneys and their  
11 deputies and assistants shall be reimbursed for their actual travel and  
12 subsistence expenses incurred while in the performance of their official  
13 duties within or without the district *as provided in the district attorney*  
14 *interlocal cooperation agreement.*

15 Sec. 5. K.S.A. 22a-106 is hereby amended to read as follows: 22a-  
16 106. (a) Within the limits of appropriations therefor, the district attorney  
17 shall appoint such assistant district attorneys, deputy district attorneys and  
18 other stenographic, investigative and clerical hire as may be necessary to  
19 carry out the functions of the district attorney's office in such judicial  
20 district ~~and he~~ *as provided in the district attorney interlocal cooperation*  
21 *agreement. The district attorney shall determine the annual compensation*  
22 *of each assistant district attorney and other persons appointed pursuant*  
23 *to this subsection. The county commissioners shall determine and allow*  
24 *such reasonable sums from funds of the county for the compensation of*  
25 *assistants, deputies and other stenographic, investigative and clerical hire*  
26 *and for other expenses of such office as may be necessary to carry out*  
27 *the function of such office as provided in the district attorney interlocal*  
28 *cooperation agreement. The counties shall ratably contribute to such com-*  
29 *ensation and other expenses based on the population of the county.*

30 (b) Each assistant and deputy district attorney shall have been regu-  
31 larly admitted to practice law within the state of Kansas prior to ~~his~~  
32 appointment. Each district attorney and ~~his~~ assistant district attorneys shall  
33 devote full time to official duties and shall not engage in the civil practice  
34 of law, except as required in performing ~~his~~ official duties while serving  
35 as district attorney or assistant district attorney, and shall not refer any  
36 client or other person or any matter to any designated attorney or firm  
37 of attorneys.

38 (c) The board of county commissioners of each county ~~contained~~ in  
39 judicial districts ~~3, 10, 18 and 29~~ *which have an office of district attorney*  
40 *shall provide suitable office space within such county for the district at-*  
41 *torney, his the district attorney's assistants, deputies, office personnel and*  
42 *equipment.*

43 (d) Notwithstanding any of the provisions of this act the district at-

1 torney, *as provided in the district attorney interlocal cooperation agree-*  
2 *ment or with the approval of the board of county commissioners, may*  
3 *appoint and employ special counsel when necessary to assist the district*  
4 *attorney in the discharge of* ~~his~~ *the district attorney's duties, such special*  
5 *counsel not to be subject to the restrictions contained in paragraph sub-*  
6 *section (b) herein.*

7 (e) Any county contained in judicial districts ~~3, 10, 18 or 20~~ *which*  
8 *have an office of district attorney may receive and expend for the oper-*  
9 *ation of the office of district attorney any federal moneys made available*  
10 *therefor.*

11 Sec. 6. K.S.A. ~~2002~~ **2003** Supp. 22a-107 is hereby amended to read  
12 as follows: 22a-107. Whenever in any of the statutes of this state the term  
13 “county attorney” is used, it shall be construed to include district attor-  
14 neys provided for by K.S.A. 22a-101, 22a-108 ~~and~~, K.S.A. 2002 Supp.  
15 22a-109 *and section 2*, and amendments thereto, unless the context oth-  
16 erwise requires.

17 Sec. 7. K.S.A. 22a-106 and K.S.A. ~~2002~~ **2003** Supp. 22a-105 and 22a-  
18 107 are hereby repealed.

19 Sec. 8. This act shall take effect and be in force from and after its  
20 publication in the statute book.

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