

17:29A-1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:29 A-1 et al

(Automobile Full
Insurance Underwriting
Association -
increase number of
directors)

LAWS OF: 1983

CHAPTER: 301

Bill No: A3226

Sponsor(s): Aduabato, Karcher and D. Gallo

Date Introduced: February 28, 1983

Committee: Assembly: -----

Senate: -----

Amended during passage: No

Date of Passage: Assembly: February 28, 1983

Senate: June 23, 1983

Date of Approval: August 8, 1983

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate No

Fiscal Note: No

Veto Message: No

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ASSEMBLY, No. 3226

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 28, 1983

By Assemblymen ADUBATO, KARCHER and D. GALLO

AN ACT concerning automobile insurance and amending P. L. 1944, c. 27 and P. L. 1983, c. 65.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1944, c. 27 (C. 17:29A-1) is amended to read
2 as follows:

3 1. As used in this act,

4 (a) "Rate" means the unit charge by which the measure of
5 exposure or the amount of insurance specified in a policy of insur-
6 ance or covered thereunder is multiplied to determine the premium.

7 (b) "Premium" means the consideration paid or to be paid to
8 an insurer for the issuance and delivery of any binder or policy of
9 insurance.

10 (c) "Rate-making" means the examination and analysis of [every
11 factor and influence] *factors and influences* related to and bearing
12 upon the hazard and risk made the subject of insurance; the collec-
13 tion and collation of such factors and influences into rating systems:
14 and the application of such rating-systems to individual risks.

15 (d) "Rating-system" means every schedule, class, classification,
16 rule, guide, standard, manual, table, rating plan, or compilation
17 by whatever name described, containing the rates used by any rat-
18 ing organization or by any insurer, or used by any insurer or by
19 any rating organization in determining or ascertaining a rate.

20 (e) "Policy of insurance," without otherwise limiting its mean-
21 ing, shall include guaranty and surety bonds.

22 (f) "Rating organization" means every person or persons, cor-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

23 poration, partnership, company, society, or association engaged in
24 the business of rate-making for two or more insurers.

25 (g) "Insurer" means any person or persons, corporation, asso-
26 ciation, partnership or company authorized by the laws of this
27 State to transact the business of insurance in this State.

28 (h) "Commissioner" means the Commissioner of Insurance of
29 New Jersey.

30 (i) "Risk," as the context may require, means, (1) as to fire
31 insurance or any other kind of insurance which, by law, may be
32 embraced in a policy of fire insurance as part thereof or as supple-
33 mental thereto, any property, real or personal, described in a policy,
34 exposed to any hazard or peril named in such policy; and (2) as
35 to all other kinds of insurance not specifically included in subsection
36 (i) (1) of this section, the hazard or peril named in a policy of
37 insurance.

38 (j) "Filer" means a rating organization or any insurer making
39 its own rates.

40 (k) "Commission" means the commission paid by the insurer to
41 the producer or, for those insurers whose sales compensation, as
42 reported on the insurer's expense exhibits, is not classified as a
43 commission, such compensation shall be treated as a commission.

1 2. Section 14 of P. L. 1944, c. 27 (C. 17:29A-14) is amended to
2 read as follows:

3 14. a. With regard to all property and casualty lines, a filer
4 may, from time to time, alter, supplement, or amend its rates,
5 rating-systems, or any part thereof, by filing with the commissioner
6 copies of such alterations, supplements, or amendments together
7 with a statement of the reason or reasons for such alteration,
8 supplement, or amendment, in a manner and with such information
9 as may be required by the commissioner. If such alteration,
10 supplement or amendment shall have the effect of increasing or
11 decreasing rates, the commissioner shall determine whether the
12 rates as altered thereby are reasonable, adequate, and not un-
13 fairly discriminatory. If the commissioner shall determine that the
14 rates as so altered are not unreasonably high, or inadequate, or
15 unfairly discriminatory, he shall make an order approving them.
16 If he shall find that the rates as altered are unreasonable, in-
17 adequate, or unfairly discriminatory, he shall issue an order dis-
18 approving such alteration, supplement or amendment.

19 b. With regard to private passenger automobile insurance, in
20 addition to or concurrently with the procedure prescribed for all
21 other property and casualty lines, a filer may, from time to time,
22 alter, supplement or amend its rates, rating systems or any part

23 thereof by making an informational filing with the commissioner of
24 alterations, supplements or amendments together with a statement
25 of the reason or reasons therefor, including but not limited to the
26 claim and expense experience of the individual filer, in accordance
27 with the provisions of subsection [c] d. of this section.

28 c. If an insurer or rating organization files a proposed alteration,
29 supplement or amendment to its rating system, or any part thereof,
30 which would result in a change in rates, the commissioner may,
31 or upon the request of the filer or the Public Advocate, shall certify
32 the matter for a hearing. The hearing shall, at the commissioner's
33 discretion, be conducted by himself or by the Office of Administra-
34 tive Law, created by P. L. 1978, c. 67 (C. 52:14F-1 et seq.), as a con-
35 tested case. The following requirements shall apply to the hearing:

36 (1) The hearing shall commence within 30 days of the date of
37 the request or decision that a hearing is to be held. The hearing
38 shall be held on consecutive working days. If the hearing is con-
39 ducted by an administrative law judge, the administrative law
40 judge shall submit his findings and recommendations to the com-
41 missioner within 30 days of the close of the hearing. A decision
42 shall be rendered by the commissioner not later than 60 days from
43 the close of the hearing. A filing shall be deemed to be approved
44 unless rejected or modified by the commissioner within the time
45 period provided herein.

46 (2) The commissioner, or the Director of the Office of Admin-
47 istrative Law, as appropriate, shall notify all interested parties,
48 including the Public Advocate on behalf of insurance consumers,
49 of the date set for commencement of the hearing on the date of the
50 filing of the request for a hearing, or within 10 days of the decision
51 that a hearing is to be held.

52 (3) The insurer or rating organization making a filing on which
53 a hearing is held shall bear the costs of the hearing.

54 (4) The commissioner may promulgate rules and regulations
55 (a) to establish standards for the submission of proposed filings,
56 amendments, additions, deletions and alterations to the rating
57 systems of filers, which may include forms to be submitted by each
58 filer; and (b) making such other provisions as he deems necessary
59 for effective implementation of this act, except that all requests
60 for information shall be limited to the kinds of detail required by
61 the commissioner under section 5 of P. L. 1944, c. 27 (C. 17:29A-5).

62 [c] d. (1) With regard to private passenger automobile insur-
63 ance, the commissioner shall annually promulgate, on or before
64 February 1, separately for each coverage, a maximum annualized
65 percentage change in rate level which a filer may implement, in

66 whole or in part, in a single or multiple filings in connection with
 67 the informational filing procedure of subsection [a.] b. of this
 68 section. The maximum annualized percentage change in rate level
 69 shall be based on rates promulgated by the rating bureau which
 70 files rates for the greatest number of insurers in the voluntary
 71 private passenger automobile insurance market in the State, ex-
 72 clusive of the residual market equalization charges as defined in
 73 subsection o. of section 15 of the "New Jersey Automobile Full
 74 Insurance Availability Act" (P. L. 1983, c. 65; C. 17:30E-3).

75 (2) The maximum annualized percentage change which a filer
 76 may implement pursuant to *paragraph (1) of this subsection* [a. of
 77 this section] shall be equal to the arithmetic average of the full
 78 annualized percentage changes implemented during the preceding
 79 three calendar years in which a rate increase was implemented by
 80 the rating bureau which files rates for the greatest number of in-
 81 surers in the voluntary private passenger automobile insurance
 82 market in the State. For purposes of this paragraph, the full
 83 annualized rate level percentage change implemented in any one
 84 calendar year shall be equal to the sum of all full annualized rate
 85 level percentage changes implemented during the same calendar
 86 year.

87 (3) Rates filed under this subsection should take effect on the
 88 date of the informational filing with the commissioner.

1 3. Section 17 of P. L. 1983, c. 65 (C. 17:30E-5) is amended to
 2 read as follows:

3 17. a. Within 45 days after the effective date of this act, [the
 4 Governor shall appoint] *there shall be appointed* a board of
 5 directors, and within 30 days after the appointment of the board,
 6 the commissioner shall call the first, or organizational meeting of
 7 the association which shall seat the board of directors. The board
 8 shall consist of [14] 17 persons, 14 of whom shall [to] be appointed
 9 by the Governor, *one of whom shall be appointed by the Speaker*
 10 *of the General Assembly, and one by the President of the Senate;*
 11 *the Director of the Division of Motor Vehicles in the Department*
 12 *of Public Law and Safety shall be an ex officio member of the board.*
 13 *Of the board members appointed by the Governor, [of which]*
 14 *eight shall represent member companies, three shall represent pro-*
 15 *ducers, and three shall be public members. Members of the board*
 16 *shall be compensated from the moneys of the association for their*
 17 *services, pursuant to standards and procedures set forth in the*
 18 *plan of operation. In appointing the representatives of the member*
 19 *companies, the Governor shall select two persons from a list of not*
 20 *fewer than three persons nominated by the American Insurance*

21 Association, or its successor organization, from the officers or em-
22 ployees of insurers which are licensed to transact automobile in-
23 surance in this State and which are members or subscribers of that
24 organization; two persons from a list of not fewer than three
25 persons nominated by the Alliance of American Insurers, or its
26 successor organization, from the officers or employees of insurers
27 which are licensed to transact automobile insurance in this State
28 and which are members or subscribers of that organization; two
29 persons from a list of not less than three persons nominated by the
30 National Association of Independent Insurers, or its successor
31 organization, from the officers or employees of insurers which are
32 licensed to transact automobile insurance in this State and which
33 are members or subscribers of that organization; and two persons
34 from the officers or employees of any insurers which are licensed in
35 this State and are not members or subscribers of any of the above
36 mentioned organizations. All nominations made by the associations
37 shall include at least one representative of an insurer which does
38 not intend to be a servicing carrier. In appointing the producer
39 representatives, the Governor shall select one person from a list
40 of not fewer than three nominated by the Professional Insurance
41 Agents Association or its successor organization; one person from
42 a list of not fewer than three nominated by the Independent In-
43 surance Agents Association or its successor organization; and one
44 person from a list of not fewer than three nominated by the In-
45 surance Brokers Association or its successor organization. The
46 Governor shall name two surrogates for each director on the board
47 from a list submitted to him by each appointee. The Governor shall,
48 with the advice and consent of the Senate, also appoint three public
49 members to the board. *The Speaker of the General Assembly and*
50 *the President of the Senate shall each appoint a public member.*
51 The commissioner or his designated representative shall be en-
52 titled to attend and participate in all meetings of the board or any
53 of its committees.

54 Each trade association and producer association shall have 15
55 days from the effective date of this act to submit its prescribed list
56 of board of director candidates to the Governor. The Governor
57 shall have 30 days from receipt of each list to select permanent
58 board members from it. If any of the associations named in this
59 section fails to submit the lists from which the Governor is to select
60 members of the board of directors within time, the Governor shall
61 appoint temporary board members to represent each association
62 that has failed to submit its list. In selecting temporary board
63 members, the Governor shall be guided by the selection criteria set

64 forth herein. Upon subsequent receipt of the list from the associa-
65 tion, the Governor shall select permanent board members to replace
66 the temporary board members within 30 days. Such replacement
67 shall become effective immediately.

68 The initial appointment of four insurer directors, one producer-
69 group directors and one public member *appointed by the Governor*
70 shall be for a term of one year. The initial appointments of all
71 other directors shall be for terms of two years. After the initial
72 appointments all directors shall be appointed for terms of two
73 years and shall serve until their successors are appointed and
74 qualified. ~~【The Governor shall fill all】~~ *All* appointed vacancies on
75 the board ~~【consistent】~~ *shall be filled in accordance* with the above-
76 mentioned procedures and classifications. Appointments to fill
77 vacancies shall be for the unexpired term of the director to be
78 replaced. ~~【Directors】~~ *Except in the case of the director of the*
79 *Division of Motor Vehicles, directors* may be reimbursed from the
80 moneys of the association for reasonable expenses incurred by them
81 as members.

82 b. After the board has been appointed it shall elect from its
83 membership a chairman and shall then meet thereafter at least
84 annually, and as often as the chairman or the plan of operation
85 shall require, or at the request of any five members of the board or
86 the commissioner. Each member of the board shall be entitled to
87 one vote. The commissioner, or his designated representative, shall
88 have no right to vote. ~~【Eight】~~ *Nine* voting members of the board
89 shall constitute a quorum. A majority of the voting members shall
90 determine any action of the board. No member may serve as chair-
91 man for more than two consecutive years.

92 c. The board shall have and exercise all powers of the association
93 not reserved to the members by the plan of operation or as other-
94 wise provided in this act.

1 4. Section 19 of P. L. 1983, c. 65 (C. 17:30E-7) is amended to
2 read as follows:

3 19. Pursuant to the plan of operation, the association shall have
4 the power and duty to:

5 a. Enter into contracts as are necessary or proper to carry out
6 the provisions and purposes of this act;

7 b. Sue or be sued in the name of the association, including taking
8 any legal actions necessary or proper for recovery of any assess-
9 ments for, on behalf of, or against members. A judgment against
10 the association shall not create any direct liability against the
11 servicing carrier, board of directors or the individual members, or
12 the individual participating members of the association;

13 c. Indemnify its directors and employees for any and all claims,
14 suits, costs of investigations, costs of defense, settlements or judg-
15 ments against them on account of an act or omission in the scope
16 of a director's duties or employee's employment. The association
17 shall refuse to indemnify if it determines that the act or failure to
18 act was because of actual fraud, willful misconduct or actual malice;

19 d. Take such action as is necessary to prevent and avoid the
20 payment of improper claims against the association or the coverage
21 provided by or through the association;

22 e. Arrange for the issuance of automobile insurance to any qual-
23 ified applicant through servicing carriers. Each servicing carrier
24 shall issue policies in the name of the servicing carrier, on behalf
25 of the association; to the extent the plan of operation provides.
26 Servicing carriers, as agents of the association, shall have no in-
27 dividual liability for claims or policies written by the association;

28 f. Appoint from among its members appropriate legal, actuarial,
29 claims, investment and other committees as necessary to provide
30 technical assistance in the operation of the association, policy and
31 other contract design, and any other function within the authority
32 of the association;

33 g. Establish standards for, and review operating practices of,
34 servicing carriers and producers to determine whether such prac-
35 tices are adequate to properly service association business, and to
36 take appropriate action to eliminate inadequate operating practices
37 and develop adequate operating practices, and to appoint an audit
38 committee to review operating practices. The audit committee shall
39 be composed of servicing carriers, producers, and member com-
40 panies who are not servicing carriers;

41 h. Develop criteria and establish a monitoring system to ensure
42 that: (1) servicing carriers do not obtain an unfair advantage,
43 because of their servicing carrier relationship with producers over
44 other member companies which are not servicing carriers; and
45 (2) member companies do not obtain an unfair advantage over
46 producers of record without a contractual relationship with a
47 voluntary market company, as a result of an offer of voluntary
48 market coverage to an insured of the association.

49 i. Order the reporting of such statistics by the members of the
50 association as it deems necessary;

51 j. Reimburse servicing carriers from association funds;

52 k. Adopt bylaws for the regulation of its internal affairs;

53 l. Employ a general manager, who shall serve at its pleasure
54 and be responsible for the conduct of the administrative affairs of
55 the association. The board may employ other necessary personnel

56 and may delegate to the general manager and other personnel such
 57 authority as it deems necessary to assure proper administration
 58 and operation of the association consistent with the plan of opera-
 59 tion. The board shall arrange and contract if necessary for suitable
 60 quarters within the State of New Jersey for operations of the
 61 association for such equipment, goods and services and *incur* such
 62 expenses as it deems necessary to assure efficient administration
 63 of the association consistent with the plan of operation. If required
 64 by the plan of operation, the board may establish service centers
 65 in underserved areas, which service centers shall provide for the
 66 dissemination of full information on the coverages available under
 67 this act and for referrals to appropriate outlets for the acquisition
 68 of such coverage;

69 m. Hear and determine complaints of any member or producer
 70 concerning the operation of the association in accordance with pro-
 71 cedures prescribed in section 28 of this act;

72 n. Annually report to the commissioner on the operation of the
 73 association;

74 o. Record and investigate complaints involving the conduct of
 75 producers and to take appropriate corrective action or to recom-
 76 mend to the commissioner appropriate disciplinary action, includ-
 77 ing suspension or revocation of authority to write association
 77A business;

78 p. Review servicing practices of servicing carriers to determine
 79 whether such practices are adequate to properly service the risks
 80 written by the association; and upon finding that the practices of
 81 any servicing carrier are inadequate, establish a program for that
 82 member which will assist the servicing carrier in the performance
 83 of its duties and charge that servicing carrier a reasonable fee for
 84 establishing and operating such a program;

85 q. Audit the operations of members for the purpose of deter-
 86 mining compliance with this act;

87 r. Develop methods and standards for the establishment of
 88 adequate, actuarially sound reserves for unpaid losses *and loss*
 89 *adjustment expenses*, including provision for incurred but not
 90 reported losses; and

91 s. Take such other action as is necessary to effectuate the pur-
 92 poses of this act.

1 5. Section 20 of P. L. 1983, c. 65 (C. 17:30E-8) is amended to
 2 read as follows:

3 20. a. The association shall derive income from the following
 4 sources for the payment of expenses, losses, and the provision of
 5 adequate, actuarially sound reserves for unpaid losses *and loss*

6 *adjustment expenses*, including incurred but not reported losses, in
7 connection with association business: (1) net premiums earned; (2)
8 income generated from any association accident surcharge system
9 permitted or required by law; (3) that percentage of surcharges
10 collected by the Division of Motor Vehicles and deposited with the
11 association pursuant to subsection b. of section 6 of the "New
12 Jersey Automobile Insurance Reform Act of 1982" (P. L. 1983,
13 c. 65; C. 17:29A-35), and that collected and retained by the associa-
14 tion pursuant to subsection c. of said section 6; (4) income collected
15 by members of the association and by the association [pursuant to
16 subsection b. of this section] *from the residual market equalization*
17 *charge*; and (5) income from investment of moneys collected pur-
18 suant to subsections (1), (2), and (3) of this subsection. Premiums
19 received as a residual market equalization charge on behalf of the
20 association, net of commissions paid, and *net of* all premium taxes,
21 shall on a monthly basis be certified to by the carrier and shall be
22 transferred to the association in accordance with the plan of opera-
23 tion. All premiums received by servicing carriers on behalf of the
24 association, net of commissions paid, *net of* all premium taxes, and
25 servicing carrier compensation, shall on a monthly basis be certified
26 to by the carrier and shall be transferred to the association in
27 accordance with the plan of operation.

28 All claims *and claim expense payments* paid on association
29 business shall be disbursed by the servicing carriers or the associa-
30 tion through drafts drawn on association funds in accordance with
31 the plan of operation. Servicing carriers, as agents of the associa-
32 tion, shall have no individual liability on claims or policies written
33 by the association.

34 b. At least annually, the board shall file its experience with the
35 commissioner, which experience shall include the projected income,
36 expenses, losses and reserve requirements of the association for the
37 ensuing year, any adjustment in previously established reserves for
38 unpaid losses *and loss adjustment expenses* necessary to make such
39 reserves adequate and actuarially sound, and the initial filing shall
40 include the experience of the automobile insurance plan established
41 pursuant to P. L. 1970, c. 215 (C. 17:29D-1). The board shall include
42 in its filing with the commissioner, for his approval, a computation
43 of the residual market equalization charge per insured vehicle to be
44 collected by each member from its voluntary insureds, exclusive of
45 principal operators 65 years of age or older, and by each servicing
46 carrier from association insureds, exclusive of principal operators
47 65 years of age or older, to offset the anticipated losses of the
48 association.

49 At the end of the first 12 months of the operation of the associa-
50 tion and at least annually thereafter, the board shall also include
51 in its filing with the commissioner a review of the previous year's
52 experience, setting forth the income losses, and reserve require-
53 ments, including any adjustment in previously established reserves
54 for unpaid losses *and loss adjustment expenses* necessary to make
55 such reserves adequate and actuarially sound, and expenses of the
56 association during the previous year. If a profit is found by the
57 commissioner to have been realized, such amount shall reduce the
58 residual market equalization charge levied on policyholders pur-
59 suant to subsection d. of this section. If a loss is found by the com-
60 missioner to have occurred, such amount shall increase the charge
61 levied on policyholders pursuant to subsection d. of this section.
62 The filing shall be accompanied by such statistics and other in-
63 formation as the commissioner may deem necessary. The commis-
64 sioner shall, within 60 days of such filing, approve or disapprove the
65 filing. Failure to act within 60 days shall be deemed approval of
66 the filing except that the running of the 60-day period shall be
67 tolled by a request for additional information by the commissioner
68 or until the association notifies the commissioner that it will not
69 provide such additional information, together with the reason for
70 not supplying the information. Failure to comply with a reasonable
71 request for information may be a ground for disapproving all or
72 part of the filing. If the commissioner disapproves all or part of
73 the filing, he shall state the reasons for such disapproval, and in-
74 dicate such portion of the filing he approves. Such disapproval shall
75 be subject to review by the Appellate Division of the Superior
76 Court.

77 c. The residual market equalization charge last approved by the
78 commissioner shall continue to apply while the application for the
79 revised charge is being processed by the commissioner pursuant to
80 this section.

81 d. The residual market equalization charge per insured vehicle
82 shall be collected following the effective date of such approval by
83 the insurer from its policyholders, exclusive of principal operators
84 65 years of age or older, on a uniform net direct car year of liability
85 exposure basis and a net direct car year of physical damage ex-
86 posure basis. Any insurer or rating organization making a residual
87 market equalization charge pursuant to this subsection shall, 15
88 days prior to the date of the implementation of the proposed rate
89 adjustment, make an informational filing with the commissioner
90 documenting compliance with the established method of distributing
91 such residual market equalization charge.

92 e. Any insurer licensed to transact automobile insurance after the
93 effective date of this act, shall become a member of the association
94 upon receiving such license and the determination of any such in-
95 surer's participation in the association shall be made as of the date
96 of such membership in the same manner as for all other members
97 of the association.

1 6. This act shall take effect immediately.

STATEMENT

This bill increases, from 14 to 17, the number of board of directors of the New Jersey Automobile Full Insurance Underwriting Association. The three new members are the Director of Division of Motor Vehicles, who shall be an ex officio member of the board, and two additional public members who shall be appointed by, respectively, the Speaker of the General Assembly and President of the Senate. The remaining amendments are clarifying in nature, including authorization for reserves for loss adjustment expenses (sections 4 and 5) and authorization of claim expense payments to be made from association funds.

92 e. Any insurer licensed to transact automobile insurance after the
93 effective date of this act, shall become a member of the association
94 upon receiving such license and the determination of any such in-
95 surer's participation in the association shall be made as of the date
96 of such membership in the same manner as for all other members
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1 6. This act shall take effect immediately.

SPONSORS' STATEMENT

This bill increases, from 14 to 17, the number of board of directors of the New Jersey Automobile Full Insurance Underwriting Association. The three new members are the Director of Division of Motor Vehicles, who shall be an ex officio member of the board, and two additional public members who shall be appointed by, respectively, the Speaker of the General Assembly and President of the Senate. The remaining amendments are clarifying in nature, including authorization for reserves for loss adjustment expenses (sections 4 and 5) and authorization of claim expense payments to be made from association funds.

A3226(1983)

BILLS SIGNED S-1618, A-1161, A-1812, A-3226, & A-3163

PAGE TWO

MONDAY, AUGUST 8, 1983

A-3226, sponsored by Assemblyman Michael Adubato, D-Essex, which increases the number of directors on the Board of the New Jersey Automobile Full Insurance Underwriting Association from 14 to 17. Of the three additional members, one would be appointed by the Speaker of the General Assembly and one by the President of the State Senate. The Director of the Division of Motor Vehicles would also serve as an ex officio member. The remaining 14 appointments would be made by the Governor as in the original law.

A-3163, sponsored by Assemblyman Robert E. Littell, R-Sussex, which will permit assistant prosecutors in Sussex County to remain on a part-time basis. State law normally requires that, when the county prosecutor is a full-time employee, that all assistant prosecutors be full-time as well.

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