

5862

2009-2010 Regular Sessions

I N S E N A T E

June 15, 2009

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general municipal law, the vehicle and traffic law, the state finance law and the criminal procedure law, in relation to establishing a traffic and parking violations agency in the county of Suffolk

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 370 of the general municipal law is amended by
2 adding a new subdivision 3 to read as follows:
3 3. THE BOARD OF SUPERVISORS OF THE COUNTY OF SUFFOLK MAY BY LOCAL LAW
4 ESTABLISH A TRAFFIC AND PARKING VIOLATIONS AGENCY TO ASSIST THE SUFFOLK
5 COUNTY DISTRICT COURT TO ADMINISTER AND DISPOSE OF TRAFFIC AND PARKING
6 INFRACTIONS.
7 S 2. Section 370-a of the general municipal law, as added by chapter
8 496 of the laws of 1990, subdivision 1 as amended by chapter 527 of the
9 laws of 2002, is amended to read as follows:
10 S 370-a. Definitions. For the purpose of this article:
11 1. "Traffic and parking violations agency" shall mean a department of
12 the Nassau county government established pursuant to subdivision two of
13 section three hundred seventy of this article OR A DEPARTMENT IN THE
14 SUFFOLK COUNTY GOVERNMENT ESTABLISHED PURSUANT TO SUBDIVISION THREE OF
15 SUCH SECTION to administer and dispose of traffic and parking infrac-
16 tions.
17 2. "Traffic prosecutor" shall mean an attorney duly admitted to prac-
18 tice law in the state of New York who, having been appointed and either
19 hired or retained pursuant to section three hundred seventy-four of this
20 article, has the responsibility of prosecuting any traffic and parking
21 infractions returnable before the Nassau county district court OR THE
22 SUFFOLK COUNTY DISTRICT COURT pursuant to the jurisdictional limitations
23 of section three hundred seventy-one of this article.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD11913-01-9

1 S 3. Subdivisions 2, 3 and 4 of section 371 of the general municipal
2 law, subdivision 2 as amended by chapter 19 of the laws of 2009, subdi-
3 vision 3 as amended by chapter 496 of the laws of 1990 and subdivision 4
4 as amended by chapter 465 of the laws of 1998, are amended to read as
5 follows:

6 2. The Nassau county traffic and parking violations agency, as estab-
7 lished, may be authorized to assist the Nassau county district court,
8 AND THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY, AS ESTAB-
9 LISHED, MAY BE AUTHORIZED TO ASSIST THE SUFFOLK COUNTY DISTRICT COURT,
10 in the disposition and administration of infractions of traffic and
11 parking laws, ordinances, rules and regulations and the liability of
12 owners for violations of subdivision (d) of section eleven hundred elev-
13 en of the vehicle and traffic law in accordance with section eleven
14 hundred eleven-b of such law, except that such [agency] AGENCIES shall
15 not have jurisdiction over (a) the traffic infraction defined under
16 subdivision one of section eleven hundred ninety-two of the vehicle and
17 traffic law; (b) the traffic infraction defined under subdivision five
18 of section eleven hundred ninety-two of the vehicle and traffic law; (c)
19 the violation defined under paragraph (b) of subdivision four of section
20 fourteen-f of the transportation law and the violation defined under
21 clause (b) of subparagraph (iii) of paragraph d of subdivision two of
22 section one hundred forty of the transportation law; (d) the traffic
23 infraction defined under section three hundred ninety-seven-a of the
24 vehicle and traffic law and the traffic infraction defined under subdi-
25 vision (g) of section eleven hundred eighty of the vehicle and traffic
26 law; (e) any misdemeanor or felony; or (f) any offense that is part of
27 the same criminal transaction, as that term is defined in subdivision
28 two of section 40.10 of the criminal procedure law, as a violation of
29 subdivision one of section eleven hundred ninety-two of the vehicle and
30 traffic law, a violation of subdivision five of section eleven hundred
31 ninety-two of the vehicle and traffic law, a violation of paragraph (b)
32 of subdivision four of section fourteen-f of the transportation law, a
33 violation of clause (b) of subparagraph (iii) of paragraph d of subdivi-
34 sion two of section one hundred forty of the transportation law, a
35 violation of section three hundred ninety-seven-a of the vehicle and
36 traffic law, a violation of subdivision (g) of section eleven hundred
37 eighty of the vehicle and traffic law or any misdemeanor or felony.

38 3. A person charged with an infraction which shall be disposed of by
39 either a traffic violations bureau [or], the Nassau county traffic and
40 parking violations agency, OR THE SUFFOLK COUNTY TRAFFIC AND PARKING
41 VIOLATIONS AGENCY may be permitted to answer, within a specified time,
42 at the traffic violations bureau, [and] in Nassau county at the traffic
43 and parking violations agency AND IN SUFFOLK COUNTY AT THE TRAFFIC AND
44 PARKING VIOLATIONS AGENCY, either in person or by written power of
45 attorney in such form as may be prescribed in the ordinance or local law
46 creating the bureau or agency, by paying a prescribed fine and, in writ-
47 ing, waiving a hearing in court, pleading guilty to the charge or admit-
48 ting liability as an owner for the violation of subdivision (d) of
49 section eleven hundred eleven of the vehicle and traffic law, as the
50 case may be, and authorizing the person in charge of the bureau or agen-
51 cy to enter such a plea or admission and accept payment of said fine.
52 Acceptance of the prescribed fine and power of attorney by the bureau or
53 agency shall be deemed complete satisfaction for the violation or of the
54 liability, and the violator or owner liable for a violation of subdivi-
55 sion (d) of section eleven hundred eleven of the vehicle and traffic law
56 shall be given a receipt which so states. If a person charged with a

1 traffic violation does not answer as hereinbefore prescribed, within a
2 designated time, the bureau or agency may cause a complaint to be
3 entered against him forthwith and a warrant to be issued for his arrest
4 and appearance before the court, such summons to be predicated upon the
5 personal service of said summons upon the person charged with the
6 infraction. Any person who shall have been, within the preceding twelve
7 months, guilty of a number of parking violations in excess of such maxi-
8 mum number as may be designated by the court, or of three or more
9 violations other than parking violations, shall not be permitted to
10 appear and answer to a subsequent violation at the traffic violations
11 bureau or agency, but must appear in court at a time specified by the
12 bureau or agency. Such bureau or agency shall not be authorized to
13 deprive a person of his right to counsel or to prevent him from exercis-
14 ing his right to appear in court to answer to, explain, or defend any
15 charge of a violation of any traffic law, ordinance, rule or regulation.

16 4. Notwithstanding any inconsistent provision of law, fines, penalties
17 and forfeitures collected by the Nassau county OR SUFFOLK COUNTY traffic
18 and parking violations agency shall be distributed as provided in
19 section eighteen hundred three of the vehicle and traffic law. All
20 fines, penalties and forfeitures for violations adjudicated by the
21 Nassau county OR SUFFOLK COUNTY traffic and parking violations agency
22 pursuant to subdivision two of this section, with the exception of park-
23 ing violations, and except as provided in subdivision three of section
24 ninety-nine-a of the state finance law, shall be paid by such [agency]
25 AGENCIES to the state comptroller within the first ten days of the month
26 following collection. Each such payment shall be accompanied by a true
27 and complete report in such form and detail as the comptroller shall
28 prescribe.

29 S 4. Section 374 of the general municipal law, as amended by chapter
30 527 of the laws of 2002, is amended to read as follows:

31 S 374. Traffic prosecutor selection and oversight. (a) The executive
32 director of the Nassau county traffic and parking violations agency, AND
33 THE EXECUTIVE DIRECTOR OF THE SUFFOLK COUNTY TRAFFIC AND PARKING
34 VIOLATIONS AGENCY, appointed pursuant to subdivision (b) of this
35 section, shall select and may contract with or hire one or more persons
36 who are attorneys, duly admitted to the practice of law in New York
37 state for the prosecution of any traffic and parking infraction, except
38 those described in paragraphs (a), (b), (c), (d), (e) and (f) of subdi-
39 vision two of section three hundred seventy-one of this article, to be
40 heard, tried or otherwise disposed of by the district court of Nassau
41 county IN THE CASE OF AN ATTORNEY SELECTED BY THE NASSAU COUNTY EXECU-
42 TIVE DIRECTOR, OR BY THE DISTRICT COURT OF SUFFOLK COUNTY, IN THE CASE
43 OF AN ATTORNEY SELECTED BY THE SUFFOLK COUNTY EXECUTIVE DIRECTOR. Such
44 persons shall be known as "traffic prosecutors", as that term is defined
45 in section three hundred seventy-a of this article. Traffic prosecutors
46 shall have the same power as a district attorney would otherwise have in
47 the prosecution of any traffic or parking infraction which may, pursuant
48 to the jurisdictional provisions of section three hundred seventy-one of
49 this article, be prosecuted before the district court of Nassau county
50 OR THE DISTRICT COURT OF SUFFOLK COUNTY, AS THE CASE MAY BE. The execu-
51 tive director shall give active consideration to requiring that such
52 traffic prosecutors serve on a full-time basis. Traffic prosecutors are
53 prohibited from appearing in any capacity other than as a traffic prose-
54 cutor in any part of the Nassau county district court OR THE SUFFOLK
55 COUNTY DISTRICT COURT, AS THE CASE MAY BE on any matter relating to
56 traffic or parking violations and are further prohibited from appearing

1 in any capacity other than as a traffic prosecutor in any other court or
2 administrative tribunal on any matter relating to traffic or parking
3 violations.

4 (b) The county executive of the county of Nassau shall appoint a
5 person to serve as the executive director of the Nassau county traffic
6 and parking violations agency subject to the confirmation of the county
7 legislature of the county of Nassau. THE COUNTY EXECUTIVE OF THE COUNTY
8 OF SUFFOLK SHALL APPOINT A PERSON TO SERVE AS THE EXECUTIVE DIRECTOR OF
9 THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY SUBJECT TO THE
10 CONFIRMATION OF THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK. The
11 executive director shall be responsible for the oversight and adminis-
12 tration of the agency. The executive director OF NASSAU COUNTY is
13 prohibited from appearing in any capacity in any part of the Nassau
14 county district court AND THE EXECUTIVE DIRECTOR OF SUFFOLK COUNTY IS
15 PROHIBITED FROM APPEARING IN ANY CAPACITY IN ANY PART OF THE SUFFOLK
16 COUNTY DISTRICT COURT on any matter relating to traffic or parking
17 violations and is further prohibited from appearing in any capacity in
18 any other court or administrative tribunal on any matter relating to
19 traffic or parking violations.

20 (c) It shall be a misdemeanor for the executive director, any traffic
21 prosecutor or any judicial hearing officer assigned to hear traffic or
22 parking violations cases pursuant to section one thousand six hundred
23 ninety of the vehicle and traffic law to establish any quota of traffic
24 violation convictions which must be obtained by any traffic prosecutor
25 or judicial hearing officer. Nothing contained herein shall prohibit the
26 taking of any job action against a traffic prosecutor or judicial hear-
27 ing officer for failure to satisfactorily perform such prosecutor's or
28 officer's job assignment except that the employment productivity of such
29 prosecutor or officer shall not be measured by the attainment or nonat-
30 tainment of any conviction quota. For the purposes of this section a
31 conviction quota shall mean a specific number of convictions which must
32 be obtained within a specific time period.

33 (d) The legislature of the county of Nassau may appropriate those
34 monies which, in the legislature's sole discretion, are necessary for
35 the compensation of those persons selected to serve as executive direc-
36 tor and traffic prosecutors and to cover all other expenses associated
37 with the administration of the Nassau county traffic and parking
38 violations agency.

39 (E) THE LEGISLATURE OF THE COUNTY OF SUFFOLK MAY APPROPRIATE THOSE
40 MONIES WHICH, IN THE LEGISLATURE'S SOLE DISCRETION, ARE NECESSARY FOR
41 THE COMPENSATION OF THOSE PERSONS SELECTED TO SERVE AS EXECUTIVE DIREC-
42 TOR AND TRAFFIC PROSECUTORS AND TO COVER ALL OTHER EXPENSES ASSOCIATED
43 WITH THE ADMINISTRATION OF THE SUFFOLK COUNTY TRAFFIC AND PARKING
44 VIOLATIONS AGENCY.

45 S 5. The article heading of article 44-A of the vehicle and traffic
46 law, as added by chapter 496 of the laws of 1990, is amended to read as
47 follows:

48 AUTHORITY OF THE NASSAU AND SUFFOLK
49 COUNTY DISTRICT COURT
50 JUDICIAL HEARING [OFFICER] OFFICERS

51 S 6. The section heading, subdivision 1 and subdivision 4 of section
52 1690 of the vehicle and traffic law, the section heading and subdivision
53 4 as added by chapter 496 of the laws of 1990 and subdivision 1 as
54 amended by chapter 420 of the laws of 2001, are amended to read as
55 follows:

1 Authority of the Nassau county AND SUFFOLK COUNTY district court judi-
2 cial hearing [officer] OFFICERS. 1. Notwithstanding any other provision
3 of law, where the trial of a traffic or parking infraction is authorized
4 or required to be tried before the Nassau county district court OR
5 SUFFOLK COUNTY DISTRICT COURT, and such traffic and parking infraction
6 does not constitute a misdemeanor, felony, violation of subdivision one
7 of section eleven hundred ninety-two, subdivision five of section eleven
8 hundred ninety-two, section three hundred ninety-seven-a, or subdivision
9 (g) of section eleven hundred eighty of this chapter, or a violation of
10 paragraph (b) of subdivision four of section fourteen-f or clause (b) of
11 subparagraph (iii) of paragraph d of subdivision two of section one
12 hundred forty of the transportation law, or any offense that is part of
13 the same criminal transaction, as that term is defined in subdivision
14 two of section 40.10 of the criminal procedure law, as such a misdemea-
15 nor, felony, violation of subdivision one of section eleven hundred
16 ninety-two, subdivision two of section eleven hundred ninety-two,
17 section three hundred ninety-seven-a or subdivision (g) of section elev-
18 en hundred eighty of this chapter, or a violation of paragraph (b) of
19 subdivision four of section fourteen-f or clause (b) of subparagraph
20 (iii) of paragraph d of subdivision two of section one hundred forty of
21 the transportation law, the administrative judge of the county in which
22 the trial court is located, may assign judicial hearing officers to
23 conduct such a trial. Such judicial hearing officers shall be village
24 court justices or retired judges either of which shall have at least two
25 years of experience conducting trials of traffic and parking violations
26 cases and shall be admitted to practice law in this state. Where such
27 assignment is made, the judicial hearing officer shall entertain the
28 case in the same manner as a court and shall:

- 29 (a) determine all questions of law;
- 30 (b) act as the exclusive trier of all issues of fact;
- 31 (c) render a verdict;
- 32 (d) impose sentence; or
- 33 (e) dispose of the case in any manner provided by law.

34 4. Judicial hearing officers are prohibited from appearing in any
35 capacity other than as a judicial hearing officer in any part of the
36 Nassau county OR SUFFOLK COUNTY district court on any matter relating to
37 traffic or parking violations and are further prohibited from appearing
38 in any capacity other than as a judicial hearing officer in any other
39 court or administrative tribunal on any matter relating to traffic or
40 parking violations.

41 S 7. Subdivision 5 of section 350.20 of the criminal procedure law, as
42 added by chapter 496 of the laws of 1990, is amended to read as follows:

43 5. Notwithstanding the provisions of subdivision one of this section,
44 FOR ALL PROCEEDINGS BEFORE THE DISTRICT COURT OF NASSAU COUNTY the
45 administrative judge of Nassau county may, AND FOR ALL PROCEEDINGS
46 BEFORE THE DISTRICT COURT OF SUFFOLK COUNTY, THE ADMINISTRATIVE JUDGE OF
47 SUFFOLK COUNTY MAY, without the consent of the parties, assign matters
48 involving traffic and parking infractions except those described in
49 paragraphs (a), (b), (c), (d), (e) and (f) of subdivision two of section
50 three hundred seventy-one of the general municipal law to a judicial
51 hearing officer [for all proceedings before the district court of Nassau
52 county] in accordance with the provisions of section sixteen hundred
53 ninety of the vehicle and traffic law.

54 S 8. Subdivision 1 of section 225 of the vehicle and traffic law, as
55 amended by chapter 173 of the laws of 1990, is amended to read as
56 follows:

1 1. Notwithstanding any inconsistent provision of law, all violations
2 of this chapter or of a law, ordinance, order, rule or regulation relat-
3 ing to traffic, except parking, standing, stopping or pedestrian
4 offenses, which occur within a city having a population of two hundred
5 thousand or more in which administrative tribunals have heretofore been
6 established, [or within that portion of Suffolk county for which a
7 district court has been established,] and which are classified as traf-
8 fic infractions, may be heard and determined pursuant to the regulations
9 of the commissioner as provided in this article. Whenever a crime and a
10 traffic infraction arise out of the same transaction or occurrence, a
11 charge alleging both offenses may be made returnable before the court
12 having jurisdiction over the crime. Nothing herein provided shall be
13 construed to prevent a court, having jurisdiction over a criminal charge
14 relating to traffic or a traffic infraction, from lawfully entering a
15 judgment of conviction, whether or not based on a plea of guilty, for
16 any offense classified as a traffic infraction.

17 S 9. Subdivision 3 of section 99-a of the state finance law, as
18 amended by chapter 465 of the laws of 1998, is amended to read as
19 follows:

20 3. The comptroller is hereby authorized to implement alternative
21 procedures, including guidelines in conjunction therewith, relating to
22 the remittance of fines, penalties, forfeitures and other moneys by town
23 and village justice courts, and by the Nassau [county] AND SUFFOLK COUN-
24 TIES traffic and parking violations [agency] AGENCIES, to the justice
25 court fund and for the distribution of such moneys by the justice court
26 fund. Notwithstanding any law to the contrary, the alternative proce-
27 dures utilized may include:

28 a. electronic funds transfer;

29 b. remittance of funds by the justice court to the chief fiscal office
30 of the town or village, or, in the case of the Nassau [county] AND
31 SUFFOLK COUNTIES traffic and parking violations [agency] AGENCIES, to
32 the county treasurer, for distribution in accordance with instructions
33 by the comptroller; and/or

34 c. monthly, rather than quarterly, distribution of funds.

35 The comptroller may require such reporting and record keeping as he or
36 she deems necessary to ensure the proper distribution of moneys in
37 accordance with applicable laws. A justice court or the Nassau [county]
38 AND SUFFOLK COUNTIES traffic and parking violations [bureau] AGENCIES
39 may utilize these procedures only when permitted by the comptroller, and
40 such permission, once given, may subsequently be withdrawn by the comp-
41 troller on due notice.

42 S 10. Subdivision 2 of section 99-1 of the general municipal law, as
43 amended by chapter 179 of the laws of 2000, is amended to read as
44 follows:

45 2. The [county] COUNTIES of Nassau AND SUFFOLK shall be entitled to
46 receive the amounts set forth in subdivision one of this section for the
47 services of [the Nassau] THEIR RESPECTIVE county traffic and parking
48 violations agency and for all services in each case of a parking
49 violation, instituted and triable in such agency, wherein a fine is
50 imposed, a surcharge of ten dollars.

51 S 11. Subdivision 2 of section 99-1 of the general municipal law, as
52 added by chapter 261 of the laws of 1993, is amended to read as follows:

53 2. The [county] COUNTIES of Nassau AND SUFFOLK shall be entitled to
54 receive the amounts set forth in subdivision one of this section for the
55 services of [the Nassau] THEIR RESPECTIVE county traffic and parking
56 violations agency.

1 S 12. Notwithstanding any provision of law to the contrary no non-ju-
2 dicial employee of the Suffolk county district court shall suffer a
3 diminution of salary, employment status or rights solely by operation of
4 this act provided that nothing herein shall limit the legal authority of
5 the chief administrator of the courts to supervise the administration
6 and operation of the unified court system.

7 S 13. The administrative judge of Suffolk county shall issue on an
8 annual basis, beginning eighteen months following the creation of the
9 Suffolk county traffic and parking violations agency pursuant to Suffolk
10 county local law, a report detailing the progress, development and oper-
11 ations of the traffic and parking violations agency. The report shall be
12 provided to the governor, the temporary president of the senate, the
13 speaker of the assembly, the Suffolk county executive, the Suffolk coun-
14 ty board of supervisors, the presiding judge of the Suffolk county
15 district court and the Suffolk county district attorney.

16 S 14. This act shall take effect immediately; provided, however, the
17 amendments to sections 370-a, subdivisions 2, 3 and 4 of section 371 and
18 section 374 of the general municipal law, the article heading of article
19 44-A and the section heading and subdivisions 1 and 4 of section 1690 of
20 the vehicle and traffic law and subdivision 5 of section 350.20 of the
21 criminal procedure law, as made by sections two, three, four, five, six
22 and seven of this act, respectively, shall take effect only in the event
23 that the county of Suffolk shall have by local law established a traffic
24 and parking violations agency; provided that the board of supervisors of
25 the county of Suffolk shall notify the legislative bill drafting commis-
26 sion upon the occurrence of the enactment of the legislation provided
27 for in sections two, three, four, five, six and seven of this act in
28 order that the commission may maintain an accurate and timely effective
29 data base of the official text of the laws of the state of New York in
30 furtherance of effectuating the provisions of section 44 of the legisla-
31 tive law and section 70-b of the public officers law; provided, however,
32 that the amendments to section 371 of the general municipal law made by
33 section three of this act shall not affect the expiration of such
34 section and shall be deemed to expire therewith; and provided that the
35 amendments to subdivision 2 of section 99-1 of the general municipal law
36 made by section ten of this act shall be subject to the expiration and
37 reversion of such subdivision pursuant to section 6 of chapter 179 of
38 the laws of 2000, as amended, when upon such date the provisions of
39 section eleven of this act shall take effect.