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Cal. No. 358

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. THERE SHALL BE A DEPARTMENT OF THE SUFFOLK COUNTY GOVERNMENT KNOWN  
4 AS THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY, WHICH SHALL  
5 OPERATE UNDER THE DIRECTION AND CONTROL OF THE COUNTY EXECUTIVE.  
6 S 2. Section 370-a of the general municipal law, as added by chapter  
7 496 of the laws of 1990, subdivision 1 as amended by chapter 527 of the  
8 laws of 2002, is amended to read as follows:  
9 S 370-a. Definitions. For the purpose of this article:  
10 1. "Traffic and parking violations agency" shall mean a department of  
11 the Nassau county government established pursuant to subdivision two of  
12 section three hundred seventy of this article OR A DEPARTMENT IN THE  
13 SUFFOLK COUNTY GOVERNMENT ESTABLISHED PURSUANT TO SUBDIVISION THREE OF  
14 SUCH SECTION to administer and dispose of traffic and parking infrac-  
15 tions.

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

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1 2. "Traffic prosecutor" shall mean an attorney duly admitted to prac-  
2 tice law in the state of New York who, having been appointed and either  
3 hired or retained pursuant to section three hundred seventy-four of this  
4 article, has the responsibility of prosecuting any traffic and parking  
5 infractions returnable before the Nassau county district court OR THE  
6 SUFFOLK COUNTY DISTRICT COURT pursuant to the jurisdictional limitations  
7 of section three hundred seventy-one of this article.

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

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

45 3. A person charged with an infraction which shall be disposed of by  
46 either a traffic violations bureau [or], the Nassau county traffic and  
47 parking violations agency, OR THE SUFFOLK COUNTY TRAFFIC AND PARKING  
48 VIOLATIONS AGENCY may be permitted to answer, within a specified time,  
49 at the traffic violations bureau, [and] in Nassau county at the traffic  
50 and parking violations agency AND IN SUFFOLK COUNTY AT THE TRAFFIC AND  
51 PARKING VIOLATIONS AGENCY, either in person or by written power of  
52 attorney in such form as may be prescribed in the ordinance or local law  
53 creating the bureau or agency, by paying a prescribed fine and, in writ-  
54 ing, waiving a hearing in court, pleading guilty to the charge or admit-  
55 ting liability as an owner for the violation of subdivision (d) of  
56 section eleven hundred eleven of the vehicle and traffic law, as the

1 case may be, and authorizing the person in charge of the bureau or agen-  
2 cy to enter such a plea or admission and accept payment of said fine.  
3 Acceptance of the prescribed fine and power of attorney by the bureau or  
4 agency shall be deemed complete satisfaction for the violation or of the  
5 liability, and the violator or owner liable for a violation of subdivi-  
6 sion (d) of section eleven hundred eleven of the vehicle and traffic law  
7 shall be given a receipt which so states. If a person charged with a  
8 traffic violation does not answer as hereinbefore prescribed, within a  
9 designated time, the bureau or agency may cause a complaint to be  
10 entered against him forthwith and a warrant to be issued for his arrest  
11 and appearance before the court, such summons to be predicated upon the  
12 personal service of said summons upon the person charged with the  
13 infraction. Any person who shall have been, within the preceding twelve  
14 months, guilty of a number of parking violations in excess of such maxi-  
15 mum number as may be designated by the court, or of three or more  
16 violations other than parking violations, shall not be permitted to  
17 appear and answer to a subsequent violation at the traffic violations  
18 bureau or agency, but must appear in court at a time specified by the  
19 bureau or agency. Such bureau or agency shall not be authorized to  
20 deprive a person of his right to counsel or to prevent him from exercis-  
21 ing his right to appear in court to answer to, explain, or defend any  
22 charge of a violation of any traffic law, ordinance, rule or regulation.

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

36 S 4. Section 374 of the general municipal law, as amended by chapter  
37 527 of the laws of 2002, is amended to read as follows:

38 S 374. Traffic prosecutor selection and oversight. (a) The executive  
39 director of the Nassau county traffic and parking violations agency, AND  
40 THE EXECUTIVE DIRECTOR OF THE SUFFOLK COUNTY TRAFFIC AND PARKING  
41 VIOLATIONS AGENCY, appointed pursuant to subdivision (b) of this  
42 section, shall select and may contract with or hire one or more persons  
43 who are attorneys, duly admitted to the practice of law in New York  
44 state for the prosecution of any traffic and parking infraction, except  
45 those described in paragraphs (a), (b), (c), (d), (e) and (f) of subdivi-  
46 sion two of section three hundred seventy-one of this article, to be  
47 heard, tried or otherwise disposed of by the district court of Nassau  
48 county IN THE CASE OF AN ATTORNEY SELECTED BY THE NASSAU COUNTY EXECU-  
49 TIVE DIRECTOR, OR BY THE DISTRICT COURT OF SUFFOLK COUNTY, IN THE CASE  
50 OF AN ATTORNEY SELECTED BY THE SUFFOLK COUNTY EXECUTIVE DIRECTOR. Such  
51 persons shall be known as "traffic prosecutors", as that term is defined  
52 in section three hundred seventy-a of this article. Traffic prosecutors  
53 shall have the same power as a district attorney would otherwise have in  
54 the prosecution of any traffic or parking infraction which may, pursuant  
55 to the jurisdictional provisions of section three hundred seventy-one of  
56 this article, be prosecuted before the district court of Nassau county

1 OR THE DISTRICT COURT OF SUFFOLK COUNTY, IF THE TRAFFIC VIOLATION  
2 OCCURRED IN SUFFOLK COUNTY. The executive director shall give active  
3 consideration to requiring that such traffic prosecutors serve on a  
4 full-time basis. Traffic prosecutors are prohibited from appearing in  
5 any capacity other than as a traffic prosecutor in any part of the  
6 Nassau county district court OR THE SUFFOLK COUNTY DISTRICT COURT, IF  
7 THE TRAFFIC VIOLATION OCCURRED IN SUFFOLK COUNTY on any matter relating  
8 to traffic or parking violations and are further prohibited from appear-  
9 ing in any capacity other than as a traffic prosecutor in any other  
10 court or administrative tribunal on any matter relating to traffic or  
11 parking violations.

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

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

41 (d) The legislature of the county of Nassau may appropriate those  
42 monies which, in the legislature's sole discretion, are necessary for  
43 the compensation of those persons selected to serve as executive direc-  
44 tor and traffic prosecutors and to cover all other expenses associated  
45 with the administration of the Nassau county traffic and parking  
46 violations agency.

47 (E) THE LEGISLATURE OF THE COUNTY OF SUFFOLK MAY APPROPRIATE THOSE  
48 MONIES WHICH, IN THE LEGISLATURE'S SOLE DISCRETION, ARE NECESSARY FOR  
49 THE COMPENSATION OF THOSE PERSONS SELECTED TO SERVE AS EXECUTIVE DIREC-  
50 TOR AND TRAFFIC PROSECUTORS AND TO COVER ALL OTHER EXPENSES ASSOCIATED  
51 WITH THE ADMINISTRATION OF THE SUFFOLK COUNTY TRAFFIC AND PARKING  
52 VIOLATIONS AGENCY.

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

1                   AUTHORITY OF THE NASSAU AND SUFFOLK  
2                   COUNTY DISTRICT COURT  
3                   JUDICIAL HEARING [OFFICER] OFFICERS

4       S 6. The section heading, subdivision 1 and subdivision 4 of section  
5 1690 of the vehicle and traffic law, the section heading and subdivision  
6 4 as added by chapter 496 of the laws of 1990 and subdivision 1 as  
7 amended by chapter 420 of the laws of 2001, are amended to read as  
8 follows:

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

- 37       (a) determine all questions of law;  
38       (b) act as the exclusive trier of all issues of fact;  
39       (c) render a verdict;  
40       (d) impose sentence; or  
41       (e) dispose of the case in any manner provided by law.

42       4. Judicial hearing officers are prohibited from appearing in any  
43 capacity other than as a judicial hearing officer in any part of the  
44 Nassau county OR SUFFOLK COUNTY district court on any matter relating to  
45 traffic or parking violations and are further prohibited from appearing  
46 in any capacity other than as a judicial hearing officer in any other  
47 court or administrative tribunal on any matter relating to traffic or  
48 parking violations.

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

51       5. Notwithstanding the provisions of subdivision one of this section,  
52 FOR ALL PROCEEDINGS BEFORE THE DISTRICT COURT OF NASSAU COUNTY the  
53 administrative judge of Nassau county may, AND FOR ALL PROCEEDINGS  
54 BEFORE THE DISTRICT COURT OF SUFFOLK COUNTY, THE ADMINISTRATIVE JUDGE OF  
55 SUFFOLK COUNTY MAY, without the consent of the parties, assign matters

1 involving traffic and parking infractions except those described in  
2 paragraphs (a), (b), (c), (d), (e) and (f) of subdivision two of section  
3 three hundred seventy-one of the general municipal law to a judicial  
4 hearing officer [for all proceedings before the district court of Nassau  
5 county] in accordance with the provisions of section sixteen hundred  
6 ninety of the vehicle and traffic law.

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

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

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

29 3. The comptroller is hereby authorized to implement alternative  
30 procedures, including guidelines in conjunction therewith, relating to  
31 the remittance of fines, penalties, forfeitures and other moneys by town  
32 and village justice courts, and by the Nassau [county] AND SUFFOLK COUN-  
33 TIES traffic and parking violations [agency] AGENCIES, to the justice  
34 court fund and for the distribution of such moneys by the justice court  
35 fund. Notwithstanding any law to the contrary, the alternative proce-  
36 dures utilized may include:

37 a. electronic funds transfer;

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

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

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

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

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

1 violations agency and for all services in each case of a parking  
2 violation, instituted and triable in such agency, wherein a fine is  
3 imposed, a surcharge of ten dollars.

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

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

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

16 S 13. The administrative judge of Suffolk county shall issue on an  
17 annual basis, beginning eighteen months following the creation of the  
18 Suffolk county traffic and parking violations agency pursuant to Suffolk  
19 county local law, a report detailing the progress, development and oper-  
20 ations of the traffic and parking violations agency. The report shall be  
21 provided to the governor, the temporary president of the senate, the  
22 speaker of the assembly, the Suffolk county executive, the legislature  
23 of the county of Suffolk, the presiding judge of the Suffolk county  
24 district court and the Suffolk county district attorney.

25 S 14. This act shall take effect immediately; provided, however, the  
26 amendments to sections 370-a, subdivisions 2, 3 and 4 of section 371 and  
27 section 374 of the general municipal law, the article heading of article  
28 44-A and the section heading and subdivisions 1 and 4 of section 1690 of  
29 the vehicle and traffic law and subdivision 5 of section 350.20 of the  
30 criminal procedure law, as made by sections two, three, four, five, six  
31 and seven of this act, respectively, shall take effect only in the event  
32 that the county of Suffolk shall have by local law established a traffic  
33 and parking violations agency; provided that the legislature of the  
34 county of Suffolk shall notify the legislative bill drafting commission  
35 upon the occurrence of the enactment of the legislation provided for in  
36 sections two, three, four, five, six and seven of this act in order that  
37 the commission may maintain an accurate and timely effective data base  
38 of the official text of the laws of the state of New York in furtherance  
39 of effectuating the provisions of section 44 of the legislative law and  
40 section 70-b of the public officers law; provided, however, that the  
41 amendments to section 371 of the general municipal law made by section  
42 three of this act shall not affect the expiration of such section and  
43 shall be deemed to expire therewith; and provided that the amendments to  
44 subdivision 2 of section 99-1 of the general municipal law made by  
45 section ten of this act shall be subject to the expiration and reversion  
46 of such subdivision pursuant to section 6 of chapter 179 of the laws of  
47 2000, as amended, when upon such date the provisions of section eleven  
48 of this act shall take effect.