

S T A T E O F N E W Y O R K

2509--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 16, 2009

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the county law and the general municipal law, in relation to greater accountability for seized assets

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

1 Section 1. The opening paragraph of subdivision 2 of section 1349 of
2 the civil practice law and rules, as added by chapter 655 of the laws of
3 1990, is amended to read as follows:
4 If any other provision of law expressly governs the manner of disposi-
5 tion of property subject to the judgment or order of forfeiture, that
6 provision of law shall be controlling. Upon application by a claiming
7 agent for reimbursement of moneys directly expended by a claiming agent
8 in the underlying criminal investigation for the purchase of contraband
9 which were converted into a non-monetary form or which have not been
10 otherwise recovered, the court shall direct such reimbursement from
11 money forfeited pursuant to this article. Upon application of the claim-
12 ing agent, the court may direct that any vehicles, vessels or aircraft
13 forfeited pursuant to this article be retained by the claiming agent for
14 law enforcement purposes, unless the court determines that such property
15 is subject to a perfected lien, in which case the court may not direct
16 that the property be retained unless all such liens on the property to
17 be retained have been satisfied or pursuant to the court's order will be
18 satisfied. In the absence of an application by the claiming agent, the
19 claiming authority may apply to the court to retain such property for
20 law enforcement purposes. Upon such application, the court may direct
21 that such property be retained by the claiming authority for law
22 enforcement purposes, unless the court determines that such property is

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

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subject to a perfected lien. If not so retained, the judgment or order shall direct the claiming authority to sell the property in accordance with article fifty-one of this chapter, and that the proceeds of such sale and any other moneys realized as a consequence of any forfeiture pursuant to this article SHALL BE DEPOSITED TO AN ASSET FORFEITURE FUND ESTABLISHED PURSUANT TO SECTION SIX-T OF THE GENERAL MUNICIPAL LAW AND shall be apportioned and paid in the following descending order of priority:

S 2. Section 1349 of the civil practice law and rules is amended by adding a new subdivision 5 to read as follows:

5. PROCEEDS FROM THE SALE OF PROPERTY AND OTHER MONEYS REALIZED AS A CONSEQUENCE OF ANY FORFEITURE DISTRIBUTED TO THE CLAIMING AGENT OR CLAIMING AUTHORITY OF ANY COUNTY, TOWN, CITY, OR VILLAGE OF WHICH THE CLAIMING AGENT OR CLAIMING AUTHORITY IS A PART, SHALL BE DEPOSITED TO AN ASSET FORFEITURE FUND ESTABLISHED PURSUANT TO SECTION SIX-T OF THE GENERAL MUNICIPAL LAW.

S 3. Subdivision 2 of section 700 of the county law is amended to read as follows:

2. Within thirty days after the receipt of any fine, penalty, recovery upon any recognizance, PROCEEDS FROM THE SALE OF PROPERTY AND OTHER MONEYS REALIZED AS A CONSEQUENCE OF ANY FORFEITURE, or other money belonging to the county, the district attorney OR THE CLAIMING AUTHORITY shall pay the same to the county treasurer. Not later than the first day of February in each year, the district attorney shall make in duplicate a verified true statement of all such moneys received and paid to the county treasurer during the preceding calendar year and at that time shall pay to the county treasurer any balance due. One statement shall be furnished to the county treasurer and the other to the clerk of the board of supervisors. A district attorney who is not re-elected shall make and file the verified statement and pay any balance of such moneys to the county treasurer within thirty days after the expiration of his term.

S 4. The general municipal law is amended by adding a new section 6-t to read as follows:

S 6-T. ASSET FORFEITURE FUND. 1. AS USED IN THIS SECTION:

A. THE TERM "GOVERNING BOARD", INsofar AS IT IS USED IN REFERENCE TO A VILLAGE, SHALL MEAN THE BOARD OF TRUSTEES THEREOF; INsofar AS IT IS USED IN REFERENCE TO A TOWN, SHALL MEAN THE TOWN BOARD THEREOF; INsofar AS IT IS USED IN REFERENCE TO A COUNTY, SHALL MEAN THE BOARD OF SUPERVISORS THEREOF; INsofar AS IT IS USED IN REFERENCE TO A CITY, SHALL MEAN THE "LEGISLATIVE BODY" THEREOF, AS THAT TERM IS DEFINED IN SUBDIVISION SEVEN OF SECTION TWO OF THE MUNICIPAL HOME RULE LAW.

B. THE TERM "CHIEF FISCAL OFFICER" SHALL MEAN:

(1) IN THE CASE OF COUNTIES OPERATING UNDER (1) AN ALTERNATIVE FORM OF COUNTY GOVERNMENT OR CHARTER ENACTED AS A STATE STATUTE OR ADOPTED UNDER THE ALTERNATIVE COUNTY GOVERNMENT LAW OR BY LOCAL LAW, THE OFFICIAL DESIGNATED IN SUCH STATUTE, CONSOLIDATED LAW OR LOCAL LAW AS THE CHIEF FISCAL OFFICER, OR, IF NO SUCH DESIGNATION IS MADE THEREIN, THE OFFICIAL POSSESSING POWERS AND DUTIES SIMILAR TO THOSE OF A COUNTY TREASURER UNDER THE COUNTY LAW AS SHALL BE DESIGNATED BY LOCAL LAW.

(2) IN THE CASE OF COUNTIES NOT OPERATING UNDER AN ALTERNATIVE FORM OF COUNTY GOVERNMENT OR CHARTER ENACTED AS A STATE STATUTE OR ADOPTED UNDER THE ALTERNATIVE COUNTY GOVERNMENT LAW OR BY LOCAL LAW, THE TREASURER, EXCEPT THAT, IN THE CASE OF COUNTIES HAVING A COMPTROLLER, IT SHALL MEAN THE COMPTROLLER.

(II) IN THE CASE OF CITIES, THE COMPTROLLER; IF A CITY DOES NOT HAVE A COMPTROLLER, THE TREASURER; IF A CITY HAS NEITHER A COMPTROLLER NOR A TREASURER, SUCH OFFICIAL POSSESSING POWERS AND DUTIES SIMILAR TO THOSE OF A CITY TREASURER AS THE FINANCE BOARD SHALL, BY RESOLUTION, DESIGNATE. A CERTIFIED COPY OF SUCH DESIGNATION SHALL BE FILED WITH THE STATE COMPTROLLER AND SHALL BE A PUBLIC RECORD.

(III) IN THE CASE OF TOWNS, THE TOWN SUPERVISOR; IF A TOWN HAS MORE THAN ONE SUPERVISOR, THE PRESIDING SUPERVISOR.

(IV) IN THE CASE OF VILLAGES, THE VILLAGE TREASURER.

C. THE TERM "CLAIMING AUTHORITY" SHALL MEAN THE DISTRICT ATTORNEY HAVING JURISDICTION OVER THE OFFENSE OR THE ATTORNEY GENERAL FOR PURPOSE OF THOSE CRIMES FOR WHICH THE ATTORNEY GENERAL HAS CRIMINAL JURISDICTION IN A CASE WHERE THE UNDERLYING CRIMINAL CHARGE HAS BEEN, IS BEING OR IS ABOUT TO BE BROUGHT BY THE ATTORNEY GENERAL, OR THE APPROPRIATE CORPORATION COUNSEL OR COUNTY ATTORNEY, PROVIDED THAT THE CORPORATION COUNSEL OR COUNTY ATTORNEY MAY ACT AS A CLAIMING AUTHORITY ONLY WITH THE CONSENT OF THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, AS APPROPRIATE.

D. THE TERM "CLAIMING AGENT" SHALL MEAN AND SHALL INCLUDE ALL PERSONS DESCRIBED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, AND SHERIFFS, UNDERSHERIFFS AND DEPUTY SHERIFFS OF COUNTIES WITHIN THE CITY OF NEW YORK.

2. THE GOVERNING BOARD SHALL AUTHORIZE THE ESTABLISHMENT OF AN ASSET FORFEITURE FUND FOR ANY CLAIMING AGENT OR CLAIMING AUTHORITY AS IS DEEMED NECESSARY FOR THE PROCEEDS OF SALE OF PROPERTY AND OTHER MONEYS REALIZED AS A CONSEQUENCE OF ANY FORFEITURE. THE SEPARATE IDENTITY OF SUCH FUND SHALL BE MAINTAINED.

3. THERE SHALL BE PAID INTO THE ASSET FORFEITURE FUND ALL PROCEEDS REALIZED AS A CONSEQUENCE OF ANY FORFEITURE ACTION.

4. THE MONEYS IN THE ASSET FORFEITURE FUND SHALL BE DEPOSITED AND SECURED IN THE MANNER PROVIDED BY SECTION TEN OF THIS ARTICLE. THE MONEYS IN SUCH FUND SO DEPOSITED SHALL BE KEPT IN A SEPARATE BANK ACCOUNT. THE CHIEF FISCAL OFFICER MAY INVEST THE MONEYS IN SUCH FUND IN THE MANNER PROVIDED IN SECTION ELEVEN OF THIS ARTICLE. ANY INTEREST EARNED OR CAPITAL GAINS REALIZED ON THE MONEYS SO DEPOSITED OR INVESTED SHALL ACCRUE TO AND BECOME PART OF EACH SUCH FUND. THE SEPARATE IDENTITY OF SUCH FUND SHALL BE MAINTAINED, WHETHER ITS ASSETS CONSIST OF CASH, INVESTMENTS, OR BOTH.

5. EVERY CLAIM FOR THE PAYMENT OF MONEY FROM THE ASSET FORFEITURE FUND MUST BE ACCOMPANIED BY A WRITTEN CERTIFICATION THAT THE EXPENDITURE IS IN COMPLIANCE WITH PURPOSES ALLOWED BY LAW. PAYMENTS FROM SUCH FUND SHALL BE MADE BY THE CHIEF FISCAL OFFICER SUBJECT TO THE REQUIRED CERTIFICATION AND THE DETERMINATION OF FUND SUFFICIENCY.

6. THE CHIEF FISCAL OFFICER, AT THE TERMINATION OF EACH FISCAL YEAR, SHALL RENDER A DETAILED REPORT OF THE OPERATION AND CONDITION OF THE ASSET FORFEITURE FUND TO THE GOVERNING BOARD. SUCH REPORT SHALL BE SUBJECT TO EXAMINATION AND AUDIT. THE CHIEF FISCAL OFFICER MAY ACCOUNT FOR SUCH FUND SEPARATE AND APART FROM ALL OTHER FUNDS OF THE VILLAGE, TOWN, COUNTY, OR CITY.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.