

7945

2009-2010 Regular Sessions

I N   A S S E M B L Y

April 28, 2009

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Introduced by M. of A. SCHIMEL, HOOPER, LAVINE -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, the vehicle and traffic law, chapter 496 of the laws of 1990 relating to establishing a traffic and parking violations agency for the county of Nassau and chapter 879 of the laws of 1936 providing for an alternative form of government for certain counties, in relation to the Nassau county traffic and parking violations agency

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

1     Section 1. Subdivisions 2 and 3 of section 371 of the general municipal law, subdivision 2 as added and subdivision 3 as amended by chapter  
2     496 of the laws of 1990, are amended to read as follows:  
3     2. (A) The Nassau county traffic and parking violations agency, as  
4     established, may be authorized to assist the Nassau county district  
5     court in the disposition and administration of infractions of traffic  
6     and parking laws, ordinances, rules and regulations, except that such  
7     agency shall not have jurisdiction over [(a)] (I) the traffic infraction  
8     defined under subdivision one of section eleven hundred ninety-two of  
9     the vehicle and traffic law; [(b)] (II) the traffic infraction defined  
10    under subdivision five of section eleven hundred ninety-two of the vehicle and traffic law; [(c)] (III) the violation defined under paragraph  
11    (b) of subdivision four of section fourteen-f of the transportation law  
12    and the violation defined under clause (b) of subparagraph (iii) of  
13    paragraph (d) of subdivision two of section one hundred forty of the  
14    transportation law; [(d)] (IV) the traffic infraction defined under  
15    section three hundred ninety-seven-a of the vehicle and traffic law and  
16    the traffic infraction defined under subdivision (g) of section eleven  
17    hundred eighty of the vehicle and traffic law; [(e)] (V) any misdemeanor  
18    or felony; or [(f)] (VI) any offense that is part of the same criminal  
19    transaction, as that term is defined in subdivision two of section 40.10  
20  
21

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

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1 of the criminal procedure law, as a violation of subdivision one of  
2 section eleven hundred ninety-two of the vehicle and traffic law, a  
3 violation of subdivision five of section eleven hundred ninety-two of  
4 the vehicle and traffic law, a violation of paragraph (b) of subdivision  
5 four of section fourteen-f of the transportation law, a violation of  
6 clause (b) of subparagraph (iii) of paragraph (d) of subdivision two of  
7 section one hundred forty of the transportation law, a violation of  
8 section three hundred ninety-seven-a of the vehicle and traffic law, a  
9 violation of subdivision (g) of section eleven hundred eighty of the  
10 vehicle and traffic law or any misdemeanor or felony.

11 (B) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (A) OF THIS SUBDIVI-  
12 SION, THE LEGISLATURE OF THE COUNTY OF NASSAU MAY ENACT A LOCAL LAW  
13 PROVIDING THAT JUDICIAL HEARING OFFICERS AT THE NASSAU COUNTY TRAFFIC  
14 AND PARKING VIOLATIONS AGENCY MAY REVIEW THE PROBABLE VALIDITY OF THE  
15 CONTINUED RETENTION OF A VEHICLE PENDING THE COMPLETION OF A CIVIL  
16 FORFEITURE PROCEEDING PURSUANT TO SECTION 8-7.0 OF THE NASSAU COUNTY  
17 ADMINISTRATIVE CODE; PROVIDED, HOWEVER, THAT SUCH REVIEW SHALL BE LIMIT-  
18 ED TO THE PROBABLE VALIDITY OF CONTINUED RETENTION OF THE VEHICLE AND  
19 SHALL NOT INCLUDE THE ADJUDICATION OF THE UNDERLYING TRAFFIC INFRACTION  
20 OR THE CIVIL ACTION FOR FORFEITURE.

21 3. A person charged with an infraction which shall be disposed of by  
22 either a traffic violations bureau or the Nassau county traffic and  
23 parking violations agency, may be permitted to answer, within a speci-  
24 fied time, at the traffic violations bureau, and in Nassau county at the  
25 traffic and parking violations agency, either in person or by written  
26 power of attorney in such form as may be prescribed in the ordinance or  
27 local law creating the bureau or agency, by paying a prescribed fine  
28 and, in writing, waiving a hearing in court, pleading guilty to the  
29 charge or admitting liability as an owner for the violation of subdivi-  
30 sion (d) of section eleven hundred eleven of the vehicle and traffic  
31 law, as the case may be, and authorizing the person in charge of the  
32 bureau or agency to enter such a plea or admission and accept payment of  
33 said fine. Acceptance of the prescribed fine and power of attorney by  
34 the bureau or agency shall be deemed complete satisfaction for the  
35 violation or of the liability, and the violator or owner liable for a  
36 violation of subdivision (d) of section eleven hundred eleven of the  
37 vehicle and traffic law shall be given a receipt which so states. If a  
38 person charged with a traffic [violation] INFRACTION does not answer as  
39 hereinbefore prescribed, within a designated time, the bureau or agency  
40 may cause a complaint to be entered against [him] SUCH PERSON forthwith  
41 and a warrant to be issued for his arrest and appearance before the  
42 court, such summons to be predicated upon the personal service of said  
43 summons upon the person charged with the infraction; AND MAY, PURSUANT  
44 TO THE PROCEDURES SET FORTH IN SECTION EIGHTEEN HUNDRED SIX-A OF THE  
45 VEHICLE AND TRAFFIC LAW, ENTER A DEFAULT JUDGMENT AGAINST SUCH PERSON.  
46 Any person who shall have been, within the preceding twelve months,  
47 guilty of a number of parking violations in excess of such maximum  
48 number as may be designated by the court, or of three or more violations  
49 other than parking violations, [shall not be permitted to appear and  
50 answer to a subsequent violation at the traffic violations bureau or  
51 agency, but] must appear BEFORE A JUDGE in court OR, IN NASSAU COUNTY,  
52 BEFORE A JUDICIAL HEARING OFFICER AT THE TRAFFIC AND PARKING VIOLATIONS  
53 AGENCY, at a time specified by the [bureau or] agency. [Such bureau or]  
54 NO agency shall [not] be authorized to deprive a person of his OR HER  
55 right to counsel or to prevent [him] SUCH PERSON from exercising his OR  
56 HER right to appear BEFORE A JUDGE in court OR, IN NASSAU COUNTY, BEFORE

1 A JUDICIAL HEARING OFFICER AT THE TRAFFIC AND PARKING VIOLATIONS AGENCY,  
2 to answer to, explain, or defend any charge of a violation of any traf-  
3 fic law, ordinance, rule or regulation.

4 S 2. The general municipal law is amended by adding a new section  
5 372-a to read as follows:

6 S 372-A. FEES. THE EXECUTIVE DIRECTOR OF THE NASSAU COUNTY TRAFFIC AND  
7 PARKING VIOLATIONS AGENCY SHALL SET FEES FOR ADMINISTRATIVE SERVICES  
8 RELATING TO THE DISPOSITION OF TRAFFIC AND PARKING VIOLATIONS, SUBJECT  
9 TO THE APPROVAL OF THE NASSAU COUNTY LEGISLATURE.

10 S 3. Subdivision (a) of section 374 of the general municipal law, as  
11 amended by chapter 527 of the laws of 2002, is amended to read as  
12 follows:

13 (a) The executive director of the Nassau county traffic and parking  
14 violations agency, appointed pursuant to subdivision (b) of this  
15 section, shall select and may contract with or hire one or more persons  
16 who are attorneys, duly admitted to the practice of law in New York  
17 state for the prosecution of any traffic and parking infraction, except  
18 those described in paragraphs (a), (b), (c), (d), (e) and (f) of subdi-  
19 vision two of section three hundred seventy-one of this article, to be  
20 heard, tried or otherwise disposed of by the district court of Nassau  
21 county. Such persons shall be known as "traffic prosecutors", as that  
22 term is defined in section three hundred seventy-a of this article.  
23 Traffic prosecutors shall have the same power as a district attorney  
24 would otherwise have HAD in the prosecution of any traffic or parking  
25 infraction which [may], pursuant to the jurisdictional provisions of  
26 section three hundred seventy-one of this article, AS SUCH PROVISIONS  
27 EXISTED PRIOR TO THE ESTABLISHMENT OF THE NASSAU COUNTY TRAFFIC AND  
28 PARKING VIOLATIONS AGENCY, WAS REQUIRED TO be prosecuted before A JUDGE  
29 OF the district court of Nassau county. The executive director shall  
30 give active consideration to requiring that such traffic prosecutors  
31 serve on a full-time basis. Traffic prosecutors are prohibited from  
32 appearing in any capacity other than as a traffic prosecutor AT THE  
33 NASSAU COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY OR in any part of  
34 the Nassau county district court on any matter relating to traffic or  
35 parking violations and are further prohibited from appearing in any  
36 capacity other than as a traffic prosecutor in any other court or admin-  
37 istrative tribunal on any matter relating to traffic or parking  
38 violations.

39 S 4. Subdivisions 1 and 3 of section 1806-a of the vehicle and traffic  
40 law, as added by chapter 841 of the laws of 1984, are amended to read as  
41 follows:

42 1. In the event a person charged with a traffic infraction does not  
43 answer within the time specified, the NASSAU COUNTY TRAFFIC AND PARKING  
44 VIOLATIONS AGENCY OR court having jurisdiction, other than a court in a  
45 city over one million population may, in addition to any other action  
46 authorized by law, enter a plea of guilty on behalf of the defendant and  
47 render a default judgment of a fine determined by the court within the  
48 amount authorized by law. Any judgment entered pursuant to default shall  
49 be civil in nature, but shall be treated as a conviction for the  
50 purposes of this section. However, at least thirty days after the expi-  
51 ration of the original date prescribed for entering a plea and before a  
52 plea of guilty and a default judgment may be rendered, the traffic  
53 violations bureau or, if there be none, the clerk of the court, OR THE  
54 CLERK OF THE NASSAU COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY, AS  
55 APPROPRIATE shall notify the defendant by certified mail: (a) of the  
56 violation charged; (b) of the impending plea of guilty and default judg-

1 ment; (c) that such judgment will be filed with the county clerk of the  
2 county in which the operator or registrant is located, and (d) that a  
3 default or plea of guilty may be avoided by entering a plea or making an  
4 appearance within thirty days of the sending of such notice. Pleas  
5 entered within that period shall be in a manner prescribed in the  
6 notice. In no case shall a default judgment and plea of guilty be  
7 rendered more than [two] FIVE years after the expiration of the time  
8 prescribed for originally entering a plea. When a person has entered a  
9 plea of not guilty and has demanded a hearing, no fine or penalty shall  
10 be imposed for any reason, prior to the holding of the hearing which  
11 shall be scheduled by the court of such city, village or town, OR THE  
12 NASSAU COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY within [thirty]  
13 SIXTY days of such demand.

14 3. Notwithstanding the provisions of subdivision one of this section,  
15 a traffic violations bureau or, if there be none, the clerk of the  
16 court, OR THE NASSAU COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY, shall  
17 have two years from the effective date of this act to serve notice upon  
18 an operator or owner of a motor vehicle charged with a traffic violation  
19 who has not answered within the time specified and prior to the effective  
20 date of this act.

21 S 5. Section 12 of chapter 496 of the laws of 1990, relating to establishing  
22 a traffic and parking violations agency for the county of  
23 Nassau, is amended to read as follows:

24 S 12. The administrative judge of Nassau county shall issue on an  
25 annual basis, beginning eighteen months following the creation the  
26 Nassau county traffic and parking violations agency pursuant to Nassau  
27 county local law, a report detailing the progress, development and operations  
28 of the traffic and parking violations agency, PROVIDED, HOWEVER,  
29 THAT THE EXECUTIVE DIRECTOR OF SUCH AGENCY SHALL BE RESPONSIBLE FOR  
30 ISSUING SUCH REPORTS AFTER THE EFFECTIVE DATE OF A CHAPTER OF THE LAWS  
31 OF 2009 WHICH AMENDED THIS SECTION. The report shall be provided to the  
32 governor, the temporary president of the senate, the speaker of the  
33 assembly, the Nassau county executive, the Nassau county [board of  
34 supervisors] LEGISLATURE, AND the presiding judge of the Nassau county  
35 district court [and the Nassau county district attorney].

36 S 6. Chapter 879 of the laws of 1936 providing for an alternative form  
37 of government for certain counties is amended by adding a new section  
38 2415-a to read as follows:

39 S 2415-A. POWERS AND DUTIES OF NON-JUDICIAL PERSONNEL. (1) CLERKS. THE  
40 CHIEF CLERK AND SUCH OTHER NON-JUDICIAL PERSONNEL AS SHALL BE AUTHORIZED  
41 BY RULE OR ORDER OF THE EXECUTIVE DIRECTOR OF THE NASSAU COUNTY TRAFFIC  
42 AND PARKING VIOLATIONS AGENCY SHALL EACH HAVE THE POWER TO ADMINISTER  
43 OATHS, TAKE ACKNOWLEDGMENTS AND SIGN THE PROCESS OR MANDATE OF THE AGENCY.  
44

45 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE EXECUTIVE  
46 DIRECTOR OF THE NASSAU COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY  
47 SHALL DESIGNATE NON-JUDICIAL PERSONNEL TO ASSUME THE POWERS AND PERFORM  
48 THE DUTIES OF CLERKS, AS DEFINED IN SUBDIVISION ONE OF THIS SECTION, AT  
49 SUCH AGENCY.

50 S 7. This act shall take effect immediately, provided that the amendments  
51 to subdivisions 2 and 3 of section 371 of the general municipal  
52 law made by section one of this act shall not affect the expiration of  
53 such section and shall expire therewith.