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

7945

2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

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:

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 496 of the laws of 1990, are amended to read as follows:

2. (A) The Nassau county traffic and parking violations agency, as established, may be authorized to assist the Nassau county district court in the disposition and administration of infractions of traffic and parking laws, ordinances, rules and regulations, except that such agency shall not have jurisdiction over [(a)] (I) the traffic infraction defined under subdivision one of section eleven hundred ninety-two of the vehicle and traffic law; [(b)] (II) the traffic infraction defined under subdivision five of section eleven hundred ninety-two of the vehicle and traffic law; [(c)] (III) the violation defined under paragraph (b) of subdivision four of section fourteen-f of the transportation law and the violation defined under clause (b) of subparagraph (iii) of paragraph (d) of subdivision two of section one hundred forty of the transportation law; [(d)] (IV) the traffic infraction defined under section three hundred ninety-seven-a of the vehicle and traffic law and the traffic infraction defined under subdivision (g) of section eleven hundred eighty of the vehicle and traffic law; [(e)] (V) any misdemeanor or felony; or [(f)] (VI) any offense that is part of the same criminal transaction, as that term is defined in subdivision two of section 40.10

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

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

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

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

A JUDICIAL HEARING OFFICER AT THE TRAFFIC AND PARKING VIOLATIONS AGENCY, to answer to, explain, or defend any charge of a violation of any traffic law, ordinance, rule or regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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