

5862

2009-2010 Regular Sessions

I N   S E N A T E

June 15, 2009

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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.

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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.