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R. R. 353

I N A S S E M B L Y

March 12, 2012

Introduced by M. of A. RAMOS, SWEENEY, ENGLEBRIGHT, THIELE, WEISENBERG, RUSSELL, MAGEE, MILLMAN, PERRY, CRESPO, SCHIMEL, LUPARDO, MAISEL, ESPINAL, ROBERTS, BRONSON, CUSICK, TITONE, BRAUNSTEIN -- Multi-Sponsored by -- M. of A. FITZPATRICK, GRAF, LOSQUADRO, McDONOUGH, MURRAY, RAI, TOBACCO -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reference changed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- again amended on special order of third reading, ordered reprinted, retaining its place on the special order of third reading

AN ACT to amend the general municipal law, the vehicle and traffic law, the criminal procedure law and the state finance 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

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

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1 SUCH SECTION to administer and dispose of traffic and parking infrac-
2 tions.

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

10 S 3. Subdivisions 2, 3 and 4 of section 371 of the general municipal
11 law, subdivision 2 as amended by section 21 of part G of chapter 58 of
12 the laws of 2012, subdivision 3 as amended by chapter 496 of the laws of
13 1990 and subdivision 4 as amended by chapter 465 of the laws of 1998,
14 are amended to read as follows:

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

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

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

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

38 S 4. Section 374 of the general municipal law, as amended by chapter
39 527 of the laws of 2002, is amended to read as follows:

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

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

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

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

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

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

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

4 AUTHORITY OF THE NASSAU AND SUFFOLK
5 COUNTY DISTRICT COURT
6 JUDICIAL HEARING [OFFICER] OFFICERS

7 S 6. The section heading, subdivision 1 and subdivision 4 of section
8 1690 of the vehicle and traffic law, the section heading and subdivision
9 4 as added by chapter 496 of the laws of 1990, subdivision 1 as amended
10 by chapter 420 of the laws of 2001, and the opening paragraph of subdi-
11 vision 1 as amended by section 20 of part G of chapter 58 of the laws of
12 2012, are amended to read as follows:

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

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

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

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

1 5. Notwithstanding the provisions of subdivision one of this section,
2 FOR ALL PROCEEDINGS BEFORE THE DISTRICT COURT OF NASSAU COUNTY the
3 administrative judge of Nassau county may, AND FOR ALL PROCEEDINGS
4 BEFORE THE DISTRICT COURT OF SUFFOLK COUNTY, THE ADMINISTRATIVE JUDGE OF
5 SUFFOLK COUNTY MAY, without the consent of the parties, assign matters
6 involving traffic and parking infractions except those described in
7 paragraphs (a), (b), (c), (d), (e) and (f) of subdivision two of section
8 three hundred seventy-one of the general municipal law to a judicial
9 hearing officer [for all proceedings before the district court of Nassau
10 county] in accordance with the provisions of section sixteen hundred
11 ninety of the vehicle and traffic law.

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

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

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

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

42 a. electronic funds transfer;

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

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

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

1 S 10. Subdivision 2 of section 99-1 of the general municipal law, as
2 added by chapter 261 of the laws of 1993, is amended to read as follows:

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

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

13 S 12. The administrative judge of Suffolk county shall issue on an
14 annual basis, beginning eighteen months following the creation of the
15 Suffolk county traffic and parking violations agency pursuant to Suffolk
16 county local law, a report detailing the progress, development and oper-
17 ations of the traffic and parking violations agency. The report shall be
18 provided to the governor, the temporary president of the senate, the
19 speaker of the assembly, the Suffolk county executive, the legislature
20 of the county of Suffolk, the presiding judge of the Suffolk county
21 district court and the Suffolk county district attorney.

22 S 13. This act shall take effect April 1, 2013; provided, however, the
23 amendments to section 370-a, subdivisions 2, 3 and 4 of section 371 and
24 section 374 of the general municipal law, the article heading of article
25 44-A and the section heading and subdivisions 1 and 4 of section 1690 of
26 the vehicle and traffic law and subdivision 5 of section 350.20 of the
27 criminal procedure law, as made by sections two, three, four, five, six
28 and seven of this act, respectively, shall take effect only in the event
29 that the county of Suffolk shall have by local law established a traffic
30 and parking violations agency; provided that the legislature of the
31 county of Suffolk shall notify the legislative bill drafting commission
32 upon the occurrence of the enactment of the legislation provided for in
33 sections two, three, four, five, six and seven of this act in order that
34 the commission may maintain an accurate and timely effective data base
35 of the official text of the laws of the state of New York in furtherance
36 of effectuating the provisions of section 44 of the legislative law and
37 section 70-b of the public officers law; provided, however, that the
38 amendments to section 371 of the general municipal law made by section
39 three of this act shall not affect the expiration of such section and
40 shall be deemed to expire therewith; and provided that the amendments to
41 subdivision 2 of section 99-1 of the general municipal law made by
42 section ten of this act shall take effect on the same date as the rever-
43 sion of subdivision 2 of section 99-1 of the general municipal law as
44 provided in section 6 of chapter 179 of the laws of 2000, as amended.