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

5634--F

Cal. No. 358

2011-2012 Regular Sessions

I N S E N A T E

June 8, 2011

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the 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:

Section 1. Section 370 of the general municipal law is amended by adding a new subdivision 3 to read as follows:

3. THERE SHALL BE A DEPARTMENT OF THE SUFFOLK COUNTY GOVERNMENT KNOWN AS THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY, WHICH SHALL OPERATE UNDER THE DIRECTION AND CONTROL OF THE COUNTY EXECUTIVE.

S 2. Section 370-a of the general municipal law, as added by chapter 496 of the laws of 1990, subdivision 1 as amended by chapter 527 of the laws of 2002, is amended to read as follows:

S 370-a. Definitions. For the purpose of this article:

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

LBD11932-16-2

1. "Traffic and parking violations agency" shall mean a department of the Nassau county government established pursuant to subdivision two of section three hundred seventy of this article OR A DEPARTMENT IN THE SUFFOLK COUNTY GOVERNMENT ESTABLISHED PURSUANT TO SUBDIVISION THREE OF SUCH SECTION to administer and dispose of traffic and parking infractions.

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

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

2. The Nassau county traffic and parking violations agency, as established, may be authorized to assist the Nassau county district court, AND THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY, AS ESTABLISHED, MAY BE AUTHORIZED TO ASSIST THE SUFFOLK COUNTY DISTRICT COURT, in the disposition and administration of infractions of traffic and parking laws, ordinances, rules and regulations and the liability of owners for violations of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law in accordance with section eleven hundred eleven-b of such law, except that such [agency] AGENCIES shall not have jurisdiction over (a) the traffic infraction defined under subdivision one of section eleven hundred ninety-two of the vehicle and traffic law; (b) the traffic infraction defined under subdivision five of section eleven hundred ninety-two of the vehicle and traffic law; (c) 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 c of subdivision two of section one hundred forty of the transportation law; (d) 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) any misdemeanor or felony; or (f) any offense that is part of the same criminal transaction, as that term is defined in subdivision two of section 40.10 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] C 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.

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, OR THE SUFFOLK 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 AND IN SUFFOLK 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 does not answer as hereinbefore prescribed, within a designated time, the bureau or agency may cause a complaint to be entered against him 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. 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 in court at a time specified by the bureau or agency. Such bureau or agency shall not be authorized to deprive a person of his right to counsel or to prevent him from exercising his right to appear in court to answer to, explain, or defend any charge of a violation of any traffic law, ordinance, rule or regulation.

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

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

S 374. Traffic prosecutor selection and oversight. (a) The executive director of the Nassau county traffic and parking violations agency, AND THE EXECUTIVE DIRECTOR OF THE SUFFOLK 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 IN THE CASE OF AN ATTORNEY SELECTED BY THE NASSAU COUNTY EXECUTIVE DIRECTOR, OR BY THE DISTRICT COURT OF SUFFOLK COUNTY, IN THE CASE OF AN ATTORNEY SELECTED BY THE SUFFOLK COUNTY EXECUTIVE DIRECTOR. 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 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, be prosecuted before the district court of Nassau county OR THE DISTRICT COURT OF SUFFOLK COUNTY, IF THE TRAFFIC VIOLATION OCCURRED IN SUFFOLK 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 in any part of the Nassau county district court OR THE SUFFOLK COUNTY DISTRICT COURT, IF THE TRAFFIC VIOLATION OCCURRED IN SUFFOLK COUNTY 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.

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

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

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

(E) THE LEGISLATURE OF THE COUNTY OF SUFFOLK MAY APPROPRIATE THOSE MONIES WHICH, IN THE LEGISLATURE'S SOLE DISCRETION, ARE NECESSARY FOR THE COMPENSATION OF THOSE PERSONS SELECTED TO SERVE AS EXECUTIVE DIRECTOR AND TRAFFIC PROSECUTORS AND TO COVER ALL OTHER EXPENSES ASSOCIATED

WITH THE ADMINISTRATION OF THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY.

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

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

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

Authority of the Nassau county AND SUFFOLK COUNTY district court judicial hearing [officer] OFFICERS. 1. Notwithstanding any other provision of law, where the trial of a traffic or parking infraction is authorized or required to be tried before the Nassau county district court OR SUFFOLK COUNTY DISTRICT COURT, and such traffic and parking infraction does not constitute a misdemeanor, felony, violation of subdivision one of section eleven hundred ninety-two, subdivision five of section eleven hundred ninety-two, section three hundred ninety-seven-a, or subdivision (g) of section eleven hundred eighty of this chapter, or a violation of paragraph (b) of subdivision four of section fourteen-f or clause (b) of subparagraph (iii) of paragraph c of subdivision two of section one hundred forty of the transportation law, or any offense that is part of the same criminal transaction, as that term is defined in subdivision two of section 40.10 of the criminal procedure law, as such a misdemeanor, felony, violation of subdivision one of section eleven hundred ninety-two, subdivision two of section eleven hundred ninety-two, section three hundred ninety-seven-a or subdivision (g) of section eleven hundred eighty of this chapter, or a violation of paragraph (b) of subdivision four of section fourteen-f or clause (b) of subparagraph (iii) of paragraph d of subdivision two of section one hundred forty of the transportation law, the administrative judge of the county in which the trial court is located, may assign judicial hearing officers to conduct such a trial. Such judicial hearing officers shall be village court justices or retired judges either of which shall have at least two years of experience conducting trials of traffic and parking violations cases and shall be admitted to practice law in this state. Where such assignment is made, the judicial hearing officer shall entertain the case in the same manner as a court and shall:

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

4. Judicial hearing officers are prohibited from appearing in any capacity other than as a judicial hearing officer in any part of the Nassau county OR SUFFOLK 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 judicial hearing officer in any other court or administrative tribunal on any matter relating to traffic or parking violations.

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

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

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

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

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

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

a. electronic funds transfer;

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

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

The comptroller may require such reporting and record keeping as he or she deems necessary to ensure the proper distribution of moneys in accordance with applicable laws. A justice court or the Nassau [county] AND SUFFOLK COUNTIES traffic and parking violations [bureau] AGENCIES may utilize these procedures only when permitted by the comptroller, and

such permission, once given, may subsequently be withdrawn by the comptroller on due notice.

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

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

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

S 12. The administrative judge of Suffolk county shall issue on an annual basis, beginning eighteen months following the creation of the Suffolk county traffic and parking violations agency pursuant to Suffolk county local law, a report detailing the progress, development and operations of the traffic and parking violations agency. The report shall be provided to the governor, the temporary president of the senate, the speaker of the assembly, the Suffolk county executive, the legislature of the county of Suffolk, the presiding judge of the Suffolk county district court and the Suffolk county district attorney.

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