

S T A T E   O F   N E W   Y O R K

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3971--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 30, 2013

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Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the county law and the general municipal law, in relation to greater accountability for seized assets

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

1     Section 1. The opening paragraph of subdivision 2 of section 1349 of  
2     the civil practice law and rules, as added by chapter 655 of the laws of  
3     1990, is amended to read as follows:  
4     If any other provision of law expressly governs the manner of disposi-  
5     tion of property subject to the judgment or order of forfeiture, that  
6     provision of law shall be controlling, WITH THE EXCEPTION THAT, NOTWITH-  
7     STANDING THE PROVISIONS OF ANY OTHER LAW, ALL FORFEITED MONIES AND  
8     PROCEEDS FROM FORFEITED PROPERTY SHALL BE DEPOSITED INTO AND DISBURSED  
9     FROM AN ASSET FORFEITURE ESCROW FUND ESTABLISHED PURSUANT TO SECTION  
10    SIX-T OF THE GENERAL MUNICIPAL LAW, WHICH SHALL GOVERN THE MAINTENANCE  
11    OF SUCH MONIES AND PROCEEDS FROM FORFEITED PROPERTY. Upon application  
12    by a claiming agent for reimbursement of moneys directly expended by a  
13    claiming agent in the underlying criminal investigation for the purchase  
14    of contraband which were converted into a non-monetary form or which  
15    have not been otherwise recovered, the court shall direct such  
16    reimbursement from money forfeited pursuant to this article. Upon appli-  
17    cation of the claiming agent, the court may direct that any vehicles,  
18    vessels or aircraft forfeited pursuant to this article be retained by  
19    the claiming agent for law enforcement purposes, unless the court deter-  
20    mines that such property is subject to a perfected lien, in which case  
21    the court may not direct that the property be retained unless all such  
22    liens on the property to be retained have been satisfied or pursuant to

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

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1 the court's order will be satisfied. In the absence of an application by  
2 the claiming agent, the claiming authority may apply to the court to  
3 retain such property for law enforcement purposes. Upon such applica-  
4 tion, the court may direct that such property be retained by the claim-  
5 ing authority for law enforcement purposes, unless the court determines  
6 that such property is subject to a perfected lien. If not so retained,  
7 the judgment or order shall direct the claiming authority to sell the  
8 property in accordance with article fifty-one of this chapter, and that  
9 the proceeds of such sale and any other moneys realized as a consequence  
10 of any forfeiture pursuant to this article SHALL BE DEPOSITED TO AN  
11 ASSET FORFEITURE ESCROW FUND ESTABLISHED PURSUANT TO SECTION SIX-T OF  
12 THE GENERAL MUNICIPAL LAW AND shall be apportioned and paid in the  
13 following descending order of priority:

14 S 2. Section 1349 of the civil practice law and rules is amended by  
15 adding a new subdivision 5 to read as follows:

16 5. MONIES AND PROCEEDS FROM THE SALE OF PROPERTY REALIZED AS A CONSE-  
17 QUENCE OF ANY FORFEITURE DISTRIBUTED TO THE CLAIMING AGENT OR CLAIMING  
18 AUTHORITY OF ANY COUNTY, TOWN, CITY, OR VILLAGE OF WHICH THE CLAIMING  
19 AGENT OR CLAIMING AUTHORITY IS A PART, SHALL BE DEPOSITED TO AN ASSET  
20 FORFEITURE ESCROW FUND ESTABLISHED PURSUANT TO SECTION SIX-T OF THE  
21 GENERAL MUNICIPAL LAW.

22 S 3. Subdivision 2 of section 700 of the county law is amended to read  
23 as follows:

24 2. Within thirty days after the receipt of any fine, penalty, recovery  
25 upon any recognizance, MONIES AND PROCEEDS FROM THE SALE OF PROPERTY  
26 REALIZED AS A CONSEQUENCE OF ANY FORFEITURE, or other money belonging to  
27 the county, the district attorney OR THE CLAIMING AUTHORITY shall pay  
28 the same to the county treasurer. Not later than the first day of Febru-  
29 ary in each year, the district attorney shall make in duplicate a veri-  
30 fied true statement of all such moneys received and paid to the county  
31 treasurer during the preceding calendar year and at that time shall pay  
32 to the county treasurer any balance due. One statement shall be  
33 furnished to the county treasurer [and the other], ONE to the clerk of  
34 the board of supervisors AND ONE TO THE STATE COMPTROLLER. A district  
35 attorney who is not re-elected shall make and file the verified state-  
36 ment and pay any balance of such moneys to the county treasurer within  
37 thirty days after the expiration of his term.

38 S 4. The general municipal law is amended by adding a new section 6-t  
39 to read as follows:

40 S 6-T. ASSET FORFEITURE ESCROW FUND. 1. AS USED IN THIS SECTION:

41 A. THE TERM "GOVERNING BOARD", INsofar AS IT IS USED IN REFERENCE TO A  
42 VILLAGE, SHALL MEAN THE BOARD OF TRUSTEES THEREOF; INsofar AS IT IS USED  
43 IN REFERENCE TO A TOWN, SHALL MEAN THE TOWN BOARD THEREOF; INsofar AS IT  
44 IS USED IN REFERENCE TO A COUNTY, SHALL MEAN THE BOARD OF SUPERVISORS OR  
45 THE COUNTY LEGISLATURE THEREOF, AS APPLICABLE; INsofar AS IT IS USED IN  
46 REFERENCE TO A CITY, SHALL MEAN THE "LEGISLATIVE BODY" THEREOF, AS THAT  
47 TERM IS DEFINED IN SUBDIVISION SEVEN OF SECTION TWO OF THE MUNICIPAL  
48 HOME RULE LAW.

49 B. THE TERM "CHIEF FISCAL OFFICER" SHALL MEAN:

50 (I) IN THE CASE OF COUNTIES OPERATING UNDER (1) AN ALTERNATIVE FORM OF  
51 COUNTY GOVERNMENT OR CHARTER ENACTED AS A STATE STATUTE OR ADOPTED UNDER  
52 THE ALTERNATIVE COUNTY GOVERNMENT LAW OR BY LOCAL LAW, THE OFFICIAL  
53 DESIGNATED IN SUCH STATUTE, CONSOLIDATED LAW OR LOCAL LAW AS THE CHIEF  
54 FISCAL OFFICER, OR, IF NO SUCH DESIGNATION IS MADE THEREIN, THE OFFICIAL  
55 POSSESSING POWERS AND DUTIES SIMILAR TO THOSE OF A COUNTY TREASURER  
56 UNDER THE COUNTY LAW AS SHALL BE DESIGNATED BY LOCAL LAW.

(2) IN THE CASE OF COUNTIES NOT OPERATING UNDER AN ALTERNATIVE FORM OF COUNTY GOVERNMENT OR CHARTER ENACTED AS A STATE STATUTE OR ADOPTED UNDER THE ALTERNATIVE COUNTY GOVERNMENT LAW OR BY LOCAL LAW, THE TREASURER, EXCEPT THAT, IN THE CASE OF COUNTIES HAVING A COMPTROLLER, IT SHALL MEAN THE COMPTROLLER.

(II) IN THE CASE OF CITIES, THE COMPTROLLER; IF A CITY DOES NOT HAVE A COMPTROLLER, THE TREASURER; IF A CITY HAS NEITHER A COMPTROLLER NOR A TREASURER, SUCH OFFICIAL POSSESSING POWERS AND DUTIES SIMILAR TO THOSE OF A CITY TREASURER AS THE FINANCE BOARD SHALL, BY RESOLUTION, DESIGNATE. A CERTIFIED COPY OF SUCH DESIGNATION SHALL BE FILED WITH THE STATE COMPTROLLER AND SHALL BE A PUBLIC RECORD.

(III) IN THE CASE OF TOWNS, THE TOWN SUPERVISOR; IF A TOWN HAS MORE THAN ONE SUPERVISOR, THE PRESIDING SUPERVISOR.

(IV) IN THE CASE OF VILLAGES, THE VILLAGE TREASURER.

C. THE TERM "CLAIMING AUTHORITY" SHALL MEAN THE DISTRICT ATTORNEY HAVING JURISDICTION OVER THE OFFENSE OR THE ATTORNEY GENERAL FOR PURPOSE OF THOSE CRIMES FOR WHICH THE ATTORNEY GENERAL HAS CRIMINAL JURISDICTION IN A CASE WHERE THE UNDERLYING CRIMINAL CHARGE HAS BEEN, IS BEING OR COULD HAVE BEEN BROUGHT BY THE ATTORNEY GENERAL, OR THE APPROPRIATE CORPORATION COUNSEL OR COUNTY ATTORNEY, WHERE SUCH CORPORATION COUNSEL OR COUNTY ATTORNEY MAY ACT AS A CLAIMING AUTHORITY ONLY WITH THE CONSENT OF THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, AS APPROPRIATE.

D. THE TERM "CLAIMING AGENT" SHALL MEAN AND SHALL INCLUDE ALL PERSONS DESCRIBED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, AND SHERIFFS, UNDERSHERIFFS AND DEPUTY SHERIFFS OF COUNTIES WITHIN THE CITY OF NEW YORK.

2. THE GOVERNING BOARD SHALL AUTHORIZE THE ESTABLISHMENT OF AN ASSET FORFEITURE ESCROW FUND FOR ANY CLAIMING AGENT OR CLAIMING AUTHORITY AS IS DEEMED NECESSARY FOR THE MONIES AND PROCEEDS OF SALE OF PROPERTY REALIZED AS A CONSEQUENCE OF ANY FORFEITURE. THE SEPARATE IDENTITY OF SUCH FUND SHALL BE MAINTAINED.

3. THERE SHALL BE PAID INTO THE ASSET FORFEITURE ESCROW FUND ALL PROCEEDS REALIZED AS A CONSEQUENCE OF ANY FORFEITURE ACTION. SUCH FUNDS SHALL INCLUDE, BUT ARE NOT LIMITED TO, ALL FUNDS AND ANY PROPERTY (REAL, PERSONAL, TANGIBLE AND/OR INTANGIBLE) THAT ARE FORFEITED PURSUANT TO AGREEMENT OR OTHERWISE PRIOR TO, IN LIEU OF OR AFTER THE LODGING OF CRIMINAL CHARGES, PRE-INDICTMENT, POST-INDICTMENT, OR AFTER CONVICTION BY PLEA OR TRIAL. SUCH FUNDS SHALL ALSO INCLUDE FUNDS THAT ARE FORFEITED IN COMPROMISE OF CHARGES THAT ARE NEVER BROUGHT.

4. THE MONIES AND PROCEEDS IN THE ASSET FORFEITURE ESCROW FUND SHALL BE DEPOSITED AND SECURED IN THE MANNER PROVIDED BY SECTION TEN OF THIS ARTICLE. ALL MONIES AND PROCEEDS SO DEPOSITED IN SUCH FUND SHALL BE KEPT IN A SEPARATE BANK ACCOUNT. THE CHIEF FISCAL OFFICER MAY INVEST THE MONEYS IN SUCH FUND IN THE MANNER PROVIDED IN SECTION ELEVEN OF THIS ARTICLE. ANY INTEREST EARNED OR CAPITAL GAINS REALIZED ON THE MONEYS SO DEPOSITED OR INVESTED SHALL ACCRUE TO AND BECOME PART OF SUCH FUND. THE SEPARATE IDENTITY OF SUCH FUND SHALL BE MAINTAINED, WHETHER ITS ASSETS CONSIST OF CASH, INVESTMENTS, OR BOTH.

5. EVERY CLAIM FOR THE PAYMENT OF MONEY FROM THE ASSET FORFEITURE ESCROW FUND SHALL SPECIFY THE PURPOSE OF THE REQUESTED PAYMENT AND MUST BE ACCOMPANIED BY A WRITTEN CERTIFICATION THAT THE EXPENDITURE IS IN COMPLIANCE WITH ALL APPLICABLE LAWS. PAYMENTS FROM SUCH FUND SHALL BE MADE BY THE CHIEF FISCAL OFFICER SUBJECT TO THE REQUIRED CERTIFICATION AND THE DETERMINATION OF FUND SUFFICIENCY.

6. THE CHIEF FISCAL OFFICER, AT THE TERMINATION OF EACH FISCAL YEAR, SHALL RENDER A DETAILED REPORT OF THE OPERATION AND CONDITION OF THE

1 ASSET FORFEITURE ESCROW FUND TO THE GOVERNING BOARD AND THE STATE COMP-  
2 TROLLER. SUCH REPORT SHALL BE SUBJECT TO EXAMINATION AND AUDIT. THE  
3 CHIEF FISCAL OFFICER MAY ACCOUNT FOR SUCH FUND SEPARATE AND APART FROM  
4 ALL OTHER FUNDS OF THE VILLAGE, TOWN, COUNTY, AND CITY.  
5 S 5. This act shall take effect on the one hundred eightieth day after  
6 it shall have become a law.