

VETO MESSAGE:

VETO MESSAGE - No. 3

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 2046-A, entitled:

"AN ACT to amend the public officers law, in relation to enforcement of the open meetings law"

NOT APPROVED

This bill addresses an issue of significant public importance: the need to ensure compliance with the provisions of the Open Meetings Law (OML). The OML is an important element of this State's regime for open government, and this bill is an effort to strengthen its enforcement mechanisms. At present, a court can order the invalidation of an act, either in whole or in part, when undertaken by a public body in violation of the OML. This bill would provide a court with alternative sanctions, including a civil penalty of up to \$500 per violation and the ability to stay implementation of an action and remand it back to the public body for reconsideration. Further, it would allow a court to declare an action void if "substantial deliberations" related thereto were undertaken in violation of the OML.

I am grateful to the sponsors for having taken on this important issue, and applaud their goal of strengthening this law. The bill, however, has significant technical problems, and is opposed by every major local government group, including the Association of Towns, the School Boards Association, the New York Conference of Mayors and Municipal Officials and the New York State Association of Counties, as well as the Division of the Budget and the Department of Health.

In particular, the proposed civil penalty is highly problematic in that the public body itself would be liable, and the ultimate price would be paid by the taxpayer. It is difficult to see how the public benefits from this penalty, or how it would serve as a deterrent, when a public body will use public funds to pay for violations. The bill does not say who would receive the penalty, and - to the extent it is to go to the State's General Fund - the upshot for State agencies is that the State would pay a penalty to itself.

In addition, the term "substantial deliberations" is undefined, and will leave localities deeply uncertain as to what they must do to avoid sanction. The entities subject to this law include numerous small municipalities, many of whom lack staff counsel or the resources to contest extensive litigation. This bill, and its ambiguous wording, is likely to

subject such localities to additional lawsuits over this statute, and place a burden on local government resources. Moreover, once a government entity has engaged in private deliberations, it is unclear how this error could be remedied. If, realizing its mistake, it seeks to make all subsequent deliberations public, it may be determined already to have engaged in "substantial deliberations," which would lead to the invalidation of its act.

Finally, one new remedy provided by the statute - to allow a court to stay implementation of any action and to remand it to the locality for

reconsideration - appears redundant. A court's declaration that an act is void under current law means that the act would not go into effect, and the locality could re-deliberate. That is the precise result of this new remedy.

I fully share the sponsors' goals of strengthening the OML, and recognize that the task of ensuring compliance with this law is a thorny one. I have directed my staff to work with the sponsors to address the concerns raised about this bill with the aim of reaching agreement between the Executive and Legislature on a bill that can be enacted this session. Because I am concerned about the impact of this bill on local governments, however, and since it seems likely to foster unnecessary litigation, I am regretfully constrained to veto it.

The bill is disapproved. (signed) DAVID A. PATERSON
