VETO MESSAGE - No. 61

TO THE ASSEMBLY:

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

Assembly Bill Number 781-B, entitled:

"AN ACT to amend the executive law, in relation to certain unlawful discriminatory practices"

NOT APPROVED

The intent of this legislation, according to its sponsors, is to subject public entities - the State and local governments - to State law requirements equivalent to those imposed by Title II of the Americans with Disabilities Act (ADA). More specifically, this bill would outlaw discrimination by public entities against individuals with disabilities with regard to access to such entities' services, programs or activities. The bill would further require reasonable modifications in governmental services, programs or activities, unless such modifications would cause an "undue hardship." Aggrieved parties could file administrative complaints with the Division of Human Rights.

While I applaud the sponsors for their efforts in working to ensure that State and local programs and services accommodate persons with disabilities, this bill contains a fatal technical flaw and would require the expenditure of resources which are simply unavailable at this time. In addition, individuals who are aggrieved under Title II of the ADA have a remedy through the federal system. Accordingly, I must reluctantly disapprove this measure.

While its sponsors maintain that this bill would require public entities to comply with Title II of the ADA, in fact it could be read as having far broader application than the ADA and its implementing regulations, and could therefore subject the State and local government to two different standards. This bill requires public entities to make reasonable modifications in services, programs or activities unless an "undue hardship" would result. The term "undue hardship" is not defined and it is not clear that this is consistent with requirements of Title II of the ADA. For example, regulations implementing Title II provide that a State or local entity would not be required to make reasonable modifications when they would fundamentally alter the service, program or activity. Similarly, under Title II, the State or a local government is not necessarily required to ensure the accessibility of each and every service, program or activity, so long as the program or activity, when viewed in its entirety, is accessible to individuals with disabilities. This bill provides no similar standard of review.

In addition, while this bill outlaws discrimination against a "qualified individual with a disability," the bill does not define this term.

Moreover, this legislation could impose civil liability on the State that is not created by the ADA. The question of the scope of the State's ability to interpose a defense under the Eleventh Amendment is response to an ADA damages action is still open in many instances. Thus it is possible that this bill, by creating a cause of action under State law -

where the Eleventh Amendment does not apply - would augment the ability of plaintiffs to bring suits for damages against the State.

Finally, there is no funding associated with the increase in resources necessary for the Division of Human Rights to implement this bill. This bill would require the hiring of new staff and the dedication of substantial resources to carry out this function. To be sure, ensuring that the State's disabled residents receive equal access to governmental programs and services is a goal which I wholeheartedly support. However, given the State's precarious financial situation, I cannot approve a measure which will increase State spending, particularly where, as here, a remedy exists in another forum.

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

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