

VETO MESSAGE:

VETO MESSAGE - No. 5

TO THE SENATE:

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

Senate Bill Number 2829, entitled:

"AN ACT to amend the state administrative procedure act, in relation to detailing the benefits and costs of proposed rules in regulatory impact statements"

NOT APPROVED

The State Administrative Procedure Act (SAPA) Section 202 (4-a) requires state agencies to publish and file with the Department of State ("DOS") an assessment of public comments the agencies receive on their proposed rules. The assessment of public comments must contain: (1) a summary and analysis of the issues raised and significant alternatives suggested in the comments; (2) a statement of the reasons why any significant alternatives were not incorporated by the agency into the rule; and (3) a description of any changes made in the rule by the agency as a result of comments received. Agencies are required to file such assessments with DOS as part of their Notice of Revised Rule Making under SAPA Section 202 (4-a).

When agencies are ready to finally adopt a proposed rule, SAPA requires them to file a Notice of Adoption with DOS. Much like the Notice of Revised Rule Making, the Notice of Adoption requires the filing of an assessment of public comments received by the agency, containing the same elements as required for the Notice of Revised Rule Making mentioned above. However, SAPA Section 202 (5) also requires agencies filing a Notice of Adoption to include a summary of their assessment of any estimates received on the cost of the proposed rule on state, local governments or regulated persons, if such estimates "differed significantly" from those presented by the agency in its filings.

This bill would amend SAPA to make the additional requirement of SAPA Section 202 (5) mentioned above applicable to Notices of Revised Rule Making. In particular, state agencies would be required to include in such notices a summary of their assessment of any cost estimates received that were significantly different from what they presented in their SAPA filings. In doing so, this bill would require state agencies to perform detailed cost impact analyses significantly earlier in the rule making process than is required under current law. Agencies would

then have to provide the same assessment again as part of the Notice of Adoption, as provided under current law.

In addition, the bill would require agencies in their filings with DOS to: (1) identify classes of persons or entities who would benefit from the adoption of a rule; (2) provide a brief description of the nature of the benefits that such classes of persons or entities would derive; and (3) provide the information and method used to analyze such benefits. The bill would further require a statement by state agencies in their filings of cost impacts, including "opportunity" costs or other "non-monetary" costs, and positive and adverse impacts of implementation of the rule on the regulated community, the government, as well as any

other person impacted but not regulated by a rule. Finally, the bill would eliminate the ability of an agency to use best estimates in providing cost impacts when the agency is unable to fully state such impacts of a rule.

This bill clearly has a commendable goal -- to improve the rule-making process by providing for greater information on the costs and benefits associated with a proposed rule, earlier in the rule making process. Such a goal is critically important as rules promulgated by state agencies often have a profound impact on regulated entities, local governments, businesses and the general public. Allowing for greater information and transparency in the regulatory process, especially earlier in the rule making process would result in smarter, streamlined and more effective rulemaking. Indeed, this goal has been a priority for my Administration and is embodied in my Executive Orders No. 17 and 25, which share the same overarching purpose as this bill.

However, while the purpose of this bill is critically important, the bill as drafted raises several technical issues of concern that constrain me to disapprove it.

First, this bill eliminates language set forth in SAPA Section 202-a(3)(c) that permits an agency to include in its statement on the projected cost of a rule, a declaration setting forth the agency's best estimate, including the information and methodology upon which the best estimate is based, and the reason why the agency cannot provide a complete cost estimate. It is often extraordinarily difficult for rule making agencies to anticipate and then precisely determine the exact costs of a proposed rule on all affected parties. In some cases, information about costs may be business confidential, and there may be no readily ascertainable market value. In other cases, the cost of obtaining a study to estimate the cost may be prohibitively high. SAPA Section 202-a(3)(c) permits agencies to explain why they cannot determine costs while maintaining a reasonable burden to come up with an appropriate estimate. By deleting this language, the bill could make the rule-making process more onerous, costly, and time consuming for agen-

cies, and frustrate the ability of agencies to ensure proper regulation and consumer protection.

In addition, this bill would impose vague requirements on agencies, which would make compliance with the provisions of this bill more difficult. For example, the bill would require agencies to analyze "opportunity" and "non-monetary" costs -- terms that are not defined in the bill. Furthermore, the bill requires agencies to assess any "positive or adverse impacts of costs" on persons or entities not regulated but otherwise affected by the rule. In addition, the ambiguous terminology in certain provisions of the bill could result in inconsistent application and interpretation by different agencies and parties throughout the state.

However, because I believe that the overarching purpose of this legislation is important, and because I am committed to streamlined and effective regulation in the State, I am directing my staff and the Governor's Office of Regulatory Reform to work with the sponsors of this legislation to develop a bill that would accomplish the purpose of this legislation while addressing these technical concerns.

The bill is disapproved.

(signed) DAVID A. PATERSON

---