

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

ALBANY, NEW YORK

January 29, 1996

3:02 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

1 P R O C E E D I N G S .

2 THE PRESIDENT: The Senate will
3 come to order.

4 Would everyone please rise and
5 repeat with me the Pledge of Allegiance.

6 (The assemblage repeated the
7 Pledge of Allegiance to the Flag.)

8 The invocation today will be
9 given by the Reverend Peter Young.

10 REVEREND PETER G. YOUNG: Let us
11 pray, and all the Senators pray for the hungry,
12 the homeless, those who are denied dignity and
13 those who have no hope, that this legislative
14 body will improve their condition and that our
15 compassionate effort will remove the causes of
16 their suffering. We ask you this in Your name,
17 now and forever. Amen.

18 THE PRESIDENT: The reading of
19 the Journal, please.

20 THE SECRETARY: In Senate,
21 Friday, January 26th. The Senate met pursuant
22 to adjournment, Senator Bruno in the Chair. The
23 Journal of Thursday, January 25th, was read and

1 approved. On motion, Senate adjourned.

2 THE PRESIDENT: Without
3 objection, the Journal stands approved as read.

4 Presentation of petitions.

5 Messages from the Assembly.

6 Messages from the Governor.

7 Reports of standing committees.

8 Reports of select committees.

9 Communications and reports from
10 state officers.

11 Motions and resolutions.

12 Senator Skelos.

13 SENATOR SKELOS: Please recognize
14 Senator Farley, please.

15 THE PRESIDENT: Senator Farley.

16 SENATOR FARLEY: Thank you, Madam
17 President.

18 On behalf of Senator Stafford,
19 please place a sponsor's star on Calendar Number
20 61.

21 On behalf of Senator Bruno, Madam
22 President, on page 6, I offer the following
23 amendments to Calendar 63, Senate Print 5711,

1 and I ask that that bill retain its place on the
2 Third Reading Calendar.

3 On behalf of Senator Maltese,
4 Madam President, on page 10, I offer the
5 following amendments to Calendar Number 107,
6 Senate Print 34 -- 3240, and I ask that that
7 bill retain its place on the Third Reading
8 Calendar.

9 Madam President, on behalf of
10 Senator Stafford, on page 15, I offer the
11 following amendments to Calendar 79, Senate
12 Print 624-A, and I ask that that bill retain its
13 place on the Third Reading Calendar.

14 THE PRESIDENT: Thank you,
15 Senator Farley. The first bill is starred and
16 the amendments are received on the other bills.

17 Senator Skelos.

18 SENATOR SKELOS: Yes, Madam
19 President.

20 There will be an immediate
21 meeting of the Rules Committee in Room 332 of
22 the Capitol.

23 THE PRESIDENT: There is an

1 immediate meeting of the Rules Committee in Room
2 332.

3 Senator Skelos, are you ready for
4 the calendar?

5 SENATOR SKELOS: Yes, at this
6 time, if we could take up the non-controversial
7 calendar.

8 THE PRESIDENT: The Secretary
9 will read.

10 THE SECRETARY: Calendar Number
11 78, by Senator Stafford, Senate Print 621-A, an
12 act to amend the Real Property Tax Law, in
13 relation to the assessment of private forest
14 lands.

15 THE PRESIDENT: Read the last
16 section, please.

17 THE SECRETARY: Section 3. This
18 act shall take effect immediately.

19 THE PRESIDENT: Call the roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 35.

22 THE PRESIDENT: The bill is
23 passed.

1 THE SECRETARY: Calendar Number
2 84, by Senator Larkin, Senate Print -

3 SENATOR LARKIN: Lay it aside for
4 the day.

5 THE PRESIDENT: Lay aside.

6 THE SECRETARY: Calendar Number
7 94, by Senator Sears, Senate Print Number 3790,
8 an act to amend the General Business Law, in
9 relation to penalties for violation thereof.

10 THE PRESIDENT: Read the last
11 section.

12 THE SECRETARY: Section 2. This
13 act shall take effect on the 1st day of
14 November.

15 THE PRESIDENT: Call the roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 35.

18 THE PRESIDENT: The bill is
19 passed.

20 THE SECRETARY: Calendar Number
21 95, by Senator Sears, Senate Print 3839-A, an
22 act to amend the General Business Law, in
23 relation to false price comparisons.

1 SENATOR LEICHTER: Lay aside.

2 THE PRESIDENT: Lay it aside,
3 please.

4 THE SECRETARY: Calendar Number
5 97, by Senator Seward, Senate Print 1626, an act
6 to amend the Public Service Law, in relation to
7 telephone blocking services.

8 SENATOR LEICHTER: Explanation.

9 THE PRESIDENT: Lay it aside,
10 please.

11 THE SECRETARY: Calendar Number
12 98, by Senator Seward, Senate Print 2014, an act
13 to amend the Public Service Law, in relation to
14 restricting access to telephone messages.

15 SENATOR SMITH: Lay it aside,
16 please.

17 THE PRESIDENT: Lay it aside,
18 please.

19 THE SECRETARY: Calendar Number
20 99, by Senator Seward, Senate Print 3422, an act
21 to amend the Public Service Law, in relation to
22 extending the period of time for the Public
23 Service Commission.

1 THE PRESIDENT: Read the last
2 section, please.

3 THE SECRETARY: Section 2. This
4 act shall take effect immediately.

5 THE PRESIDENT: Call the roll.
6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 39.

8 THE PRESIDENT: The bill is
9 passed.

10 THE SECRETARY: Calendar Number
11 101, by Senator Farley, Senate Print Number 568,
12 an act to amend the Education Law, in relation
13 to efficiency study grants.

14 THE PRESIDENT: Read the last
15 section, please.

16 THE SECRETARY: Section 2. This
17 act shall take effect immediately.

18 THE PRESIDENT: Call the roll.
19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 39.

21 THE PRESIDENT: The bill is
22 passed.

23 THE SECRETARY: Calendar Number

1 102, by Senator Cook, Senate Print Number 1303,
2 an act to amend the Education Law, in relation
3 to defining non-residents of a district for
4 purposes of admission.

5 THE PRESIDENT: Read the last
6 section.

7 THE SECRETARY: Section 2. This
8 act shall take effect on the 1st day of
9 September.

10 THE PRESIDENT: Call the roll.
11 (The Secretary called the roll.)

12 THE PRESIDENT: The bill is -

13 THE SECRETARY: Ayes 39.

14 THE PRESIDENT: The bill is
15 passed.

16 THE SECRETARY: Calendar Number
17 104, by Senator Cook, Senate Print 5435-B, an
18 act to amend the Education Law and the Local
19 Finance Law, in relation to annual meetings.

20 THE PRESIDENT: Read the last
21 section.

22 THE SECRETARY: Section 26. This
23 act shall take effect on the 30th day.

1 THE PRESIDENT: Call the roll,
2 please.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 39.

5 THE PRESIDENT: The bill is
6 passed.

7 THE SECRETARY: Calendar Number
8 109, by Senator Maziarz, Senate Print 4435-B, an
9 act to amend the Vehicle and Traffic Law, in
10 relation to fees received by county clerks.

11 THE PRESIDENT: Read the last
12 section, please.

13 THE SECRETARY: Section 2. This
14 act shall take effect on the 120th day.

15 THE PRESIDENT: Call the roll,
16 please.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 39.

19 THE PRESIDENT: The bill is
20 passed.

21 THE SECRETARY: Oh, Senator
22 Hoblock.

23 SENATOR HOBLOCK: Madam

1 President, please take up the controversial
2 calendar.

3 THE PRESIDENT: The Secretary
4 will read.

5 THE SECRETARY: Calendar Number
6 95, by Senator Sears, Senate Print 3839-A, an
7 act to amend the General Business Law, in
8 relation to false price comparisons.

9 THE PRESIDENT: Read the last
10 section, please.

11 THE SECRETARY: Section 4. This
12 act shall take effect on the 30th day.

13 THE PRESIDENT: Call the roll.
14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 39.

16 THE PRESIDENT: The bill is
17 passed.

18 THE SECRETARY: Calendar Number
19 97, by Senator Seward, Senate Print 1626, an act
20 to amend the Public Service Law, in relation to
21 telephone blocking services.

22 THE PRESIDENT: Read the last
23 section.

1 SENATOR DOLLINGER: Madam
2 President.

3 THE PRESIDENT: Oh, sorry.
4 Senator Dollinger.

5 SENATOR DOLLINGER: I just have a
6 couple quick questions about a couple issues
7 raised by NYNEX on this bill, and I don't see
8 Senator Seward in the house.

9 THE PRESIDENT: We're looking for
10 him, if you could just hold on for a minute.

11 SENATOR DOLLINGER: I'd be glad
12 to.

13 SENATOR HOBLOCK: Madam
14 President.

15 THE PRESIDENT: Yes, Senator
16 Hoblock.

17 SENATOR HOBLOCK: Can we lay that
18 bill aside temporarily, please.

19 THE PRESIDENT: Yes, lay it
20 aside.

21 The Secretary will read.

22 THE SECRETARY: Calendar Number
23 98, by Senator Seward, Senate Print Number 2014,

1 an act to amend the Public Service Law, in
2 relation to restricting access to telephone
3 messages.

4 THE PRESIDENT: Read the last
5 section.

6 SENATOR HOBLOCK: Madam
7 President, can you lay that bill aside
8 temporarily, please.

9 THE PRESIDENT: Lay it aside,
10 please.

11 Senator Hoblock.

12 SENATOR HOBLOCK: Madam
13 President, could we return to standing
14 committees please, reports of standing
15 committees. I believe there's a Rules Committee
16 report up there.

17 THE PRESIDENT: The Secretary -
18 the Secretary will read.

19 THE SECRETARY: Senator Bruno,
20 from the Committee on Rules, reports the
21 following bill directly to third reading: Senate
22 Print 5943, by Senator Seward, an act
23 authorizing the extension of time for the

1 payment of real property taxes without interest
2 or penalty in certain counties in 1996 as a
3 result of the flood emergency in such counties.

4 THE PRESIDENT: Senator Hoblock.

5 SENATOR HOBLOCK: Move the
6 adoption of the report, Madam President.

7 THE PRESIDENT: All those in
8 favor of accepting the report of the Rules
9 Committee signify by saying aye.

10 (Response of "Aye.")

11 Opposed nay.

12 (There was no response.)

13 The report is accepted.

14 Senator Hoblock.

15 SENATOR HOBLOCK: Madam
16 President, could we go back to Calendar Number
17 97, please.

18 THE PRESIDENT: The Secretary
19 will read.

20 THE SECRETARY: Calendar Number
21 97, by Senator Seward, Senate Print 1626, an act
22 to amend the Public Service Law, in relation to
23 telephone blocking services.

1 THE PRESIDENT: Senator
2 Dollinger.

3 SENATOR DOLLINGER: Right. Yes,
4 Madam President, I have a couple questions for
5 the chairman of the Energy and
6 Telecommunications Committee, which have come up
7 after our committee's deliberation on this bill,
8 and they relate to NYNEX' position statement and
9 I just thought you might clarify those if you -
10 if the chairman could.

11 SENATOR SEWARD: Yes. I'd be
12 happy to -

13 THE PRESIDENT: Take your time.

14 SENATOR SEWARD: -- answer the
15 questions.

16 SENATOR DOLLINGER: And I'll
17 apologize to my committee chairman because I
18 didn't get a chance to read this memo until
19 about an hour ago before we went into confer
20 ence, and I agree with the concept of this bill
21 as we've discussed it in committee a number of
22 times, as I do with the next piece of
23 legislation.

1 My question is, NYNEX in their
2 memo suggested that doing it the way it's laid
3 out in this bill is not only financially
4 difficult for NYNEX to do because they won't be
5 reimbursed for what they see as a significant
6 cost, but, number two, it suggests that there
7 are already steps that they have gone beyond
8 what this bill -- the particular methodology
9 that this bill employs, and my only question is
10 whether, in the restructuring or preparation of
11 this bill, you've had an opportunity to talk to
12 NYNEX and see whether their concerns can be
13 brought into this bill, so that we end up with
14 something that I think our largest telephone
15 carrier will be at least comfortable with.

16 I don't believe there's any
17 objection here about their shared goal, as I
18 share it with you, of restricting access to
19 these services, but they talk about the -- the
20 danger of a pre-recorded message for 20 seconds
21 and whether that blocks their mass -- their
22 message to the rest of their audience, and I'm
23 just wondering, it sounds very technical to me,

1 whether you've had a chance to talk to them
2 about their objections.

3 THE PRESIDENT: Senator Seward.

4 SENATOR SEWARD: Well, yes, Madam
5 President. I am aware of the NYNEX memo, and I
6 would summarize their position as having some
7 concerns about the fact that -- that some of the
8 options will prevent the PSC from instituting
9 blocking options as the technology advances, and
10 I would also point out that the idea behind this
11 legislation, it is true that NYNEX has, in fact,
12 been offering this type of blocking option to
13 their customers as a result of settlements with
14 the PSC and certain tariff determinations
15 previously.

16 Now, this may not be a problem in
17 the NYNEX territory because of that fact. What
18 we're attempting to do under this legislation is
19 to provide a means of protecting consumers from
20 such services, to make it more a consistent
21 standard throughout the state so that all
22 telephone customers, no matter in what service
23 territory they may reside would, in fact, have

1 the availability of these blocking services.

2 Senator, I believe that the bill
3 is sufficiently broad enough in terms of
4 allowing the Commission to make adjustments as
5 technology advances in the future. The point is
6 well taken, but I think the fact that the
7 Commission would have the option of promulgating
8 rules and regulations as changes warrant, that's
9 where we ought to be on this issue, and I think
10 this bill addresses that.

11 THE PRESIDENT: Senator
12 Dollinger.

13 SENATOR DOLLINGER: Madam Pres
14 ident, I'm going to support this bill as I did
15 in committee, and I appreciate the chairman's
16 clarification. It just -- it seemed to me that
17 the NYNEX discussion raised technical issues
18 about timing of the message and some other
19 things that may create a technical problem to
20 get the goal -- shared goal of encouraging the
21 use of these services and giving the public the
22 use of these services that I don't -- I just
23 didn't want to run into a technology problem

1 where it appeared though that this bill may be
2 behind what NYNEX is already doing.

3 I agree that the message sent to
4 the other telephone companies, the other
5 carriers in this state, is that we're going to
6 require them to implement some restriction on
7 these -- access to these types of messages. So
8 I think it's just something that we've got to
9 keep our eye on and make sure the PSC keeps its
10 eye on this issue, and I'm sure this is an issue
11 that we will revisit even if this statute
12 becomes law as ways around the different
13 approaches to these kinds of objectionable
14 messages, whether they go on computers or
15 televisions or telephones, make sure we keep our
16 eye on the ball and keep up with -- in conson
17 ance with the carriers and the latest
18 technology, and I know that that's the
19 chairman's intent, and that's one I share.

20 SENATOR SEWARD: Last section.

21 THE PRESIDENT: Senator
22 Leichter.

23 SENATOR LEICHTER: Thank you.

1 Senator Seward, would you yield, please?

2 SENATOR SEWARD: Yes, certainly.

3 SENATOR LEICHTER: Senator, I
4 confess to not having looked into this issue,
5 but one thought that came to me, and I tried to
6 read your bill quickly to see how it's dealt
7 with, but maybe you could address it in response
8 to my question.

9 Suppose the phone company comes
10 up and says, O.K., sure we can do it, but it's
11 going to cost a very large sum of money. Now,
12 under your bill, they can't charge the
13 residential user, so it means it becomes part of
14 their overall cost, and it's passed on to all
15 the customers.

16 I'm trying to see what, if any,
17 provision you have in there which would deal
18 with that concern.

19 THE PRESIDENT: Senator Seward.

20 SENATOR SEWARD: Senator, in
21 Section 6 of the bill, it covers the -- that
22 matter and, in fact, the expenses involved would
23 fall back to the information provider as a cost

1 of doing business.

2 SENATOR LEICHTER: So that the
3 only -- if you'll yield, Senator.

4 SENATOR SEWARD: Certainly.

5 SENATOR LEICHTER: So they can
6 not pass those charges on to the -- to their
7 customers or at least the -- let's say the
8 residential users. That has to be part of
9 whatever they charge the information providers;
10 is that -- is that right?

11 SENATOR SEWARD: That is
12 correct.

13 SENATOR LEICHTER: Thank you.

14 THE PRESIDENT: Thank you. Read
15 the last section, please.

16 THE SECRETARY: Section 5. This
17 act shall take effect immediately.

18 THE PRESIDENT: Call the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 47.

21 THE PRESIDENT: The bill is
22 passed.

23 THE SECRETARY: Calendar Number

1 98, by Senator Seward, Senate Print 2014, an act
2 to amend the Public Service Law, in relation to
3 restricting access to telephone messages.

4 SENATOR PATERSON: Explanation.

5 THE PRESIDENT: Senator Paterson,
6 did you ask for an explanation?

7 SENATOR PATERSON: Yes.

8 THE PRESIDENT: Senator Seward.

9 SENATOR SEWARD: Yes, Madam
10 President.

11 This bill that has passed the
12 Senate on previous occasions several times in
13 fact, this bill would authorize the PSC to
14 promulgate rules and regulations to prohibit
15 access to phone messages that are deemed harmful
16 to minors. Persons wishing to access these
17 messages must first request a personal
18 identification number, so-called PIN number, at
19 which time they must prove that they are 18
20 years of age or older, and the bill -- that's
21 the main thrust of the legislation.

22 The bill also requires that the
23 billing and collection practices of the phone

1 companies be a matter of a contractual agreement
2 between the information provider and the phone
3 company and, once again, this is -- this is
4 another effort -- approaches in a different way,
5 but the same goal in mind as the bill that we
6 just passed.

7 This is an effort to establish on
8 a statewide basis standards for the access by
9 adults to these messages which are deemed to be
10 harmful to minors, and the bill will help to
11 ensure that we have a consistent standard for
12 such access while granting to the telephone
13 customers more control over the use of their own
14 telephones.

15 THE PRESIDENT: Senator
16 Paterson.

17 SENATOR PATERSON: Thank you,
18 Madam President.

19 If Senator Seward would yield for
20 a question.

21 THE PRESIDENT: Senator Seward.

22 SENATOR SEWARD: Certainly.

23 SENATOR PATERSON: Senator, I

1 agree with the premise. My question is that, in
2 constructing this legislation have you
3 considered any other possibilities such as, for
4 instance, the fact that there are a lot of 900
5 numbers, maybe they aren't as harmful or maybe
6 they're not harmful at all, but they do require
7 that the caller be over age 18. So would it not
8 be more effective to establish PIN numbers for
9 everyone that has a telephone number of and in
10 itself, who is over 18, thereby establishing
11 what would be a pool of which, if you can't
12 prove that you're in the pool, then you wouldn't
13 be able to call the 900 number because, as it
14 stands now, one of my anxieties about voting for
15 this legislation -- and I voted for it in the
16 past, but it's beginning to overcome me -- is
17 the fact that there is really no privacy here
18 and we've had at least two hearings for the
19 nomination of Supreme Court justices, that of
20 Mr. Bork and also Judge Thomas, in which the
21 issue of what they did with their privacy became
22 discussed in the hearing or at least was
23 discussed in the preamble to the hearings, and

1 not that any American deserves to have their
2 privacy violated to that point when the intent
3 of your legislation is to accomplish a far
4 greater goal, which is not to have children to
5 be harmed by this obviously harmful type of
6 phone numbers that they could be dialing.

7 SENATOR SEWARD: Well, Senator, I
8 would respond in this way. What I'm attempting
9 to do here in this legislation is to deal with
10 the specific type of telephone message, the
11 so-called harmful to minors as set forth in the
12 Penal Law, very specific targeted approach to
13 that particular problem, and I personally would
14 feel that it would be a bit excessive to require
15 the PIN number for the broader array of these
16 so-called information services that are
17 available through the telephone.

18 I'm looking at this as a
19 particular issue, a particular problem that
20 we're dealing with under this legislation and
21 not looking at the broad array of all the other
22 information services that are available, and I
23 would say that I share your concern about the

1 confidentiality of those persons who request a
2 PIN number to listen to these more sexually
3 explicit messages over the telephone which
4 adults are perfectly free to do so, and they
5 would continue to do so under this legislation.

6 The confidentiality is covered
7 under the bill that I wouldn't expect that
8 information that someone has applied for such a
9 PIN number, that's not information that would be
10 distributed specifically declared confidential
11 except as outlined on -- beginning on line 19 of
12 the second page of the bill where we're dealing
13 with only law enforcement officials who may be
14 investigating the violation of this law.

15 So it's a very -- very, very
16 specific in terms of having this information
17 stay confidential except for law enforcement
18 officials who are, in fact, investigating a
19 violation of this leg... of this law.

20 ACTING PRESIDENT FARLEY: Senator
21 Paterson.

22 SENATOR PATERSON: Mr.
23 President. Thank you very much, Mr. President.

1 I don't have a problem with law
2 enforcement officials examining that material if
3 it becomes evidentiary, and I don't have a
4 problem of law enforcement officials examining
5 it at all. I thank Senator Seward for his
6 answer, and I am persuaded by his answer that
7 perhaps my suggestion relating to a more
8 expansive PIN number might be excessive.

9 I'm not persuaded, however, that
10 the confidentiality can be enforced with respect
11 to those who are employed with the various
12 telephone systems and companies who have that
13 kind of access. Certainly, the aim of the
14 legislation is quite justifiable, and I guess I
15 will vote for this bill this year again in spite
16 of the fact that I would like to put on the
17 record that there is this concern because we
18 have seen violation of this confidentiality
19 before, and it has had great ramifications to
20 the individuals who are affected.

21 This would be criminal behavior
22 if the material on these 900 numbers is
23 presented to children. It is not a crime for it

1 to be presented to adults, but there certainly
2 is at times certainly a stigma that the
3 individual would receive from the society if it
4 becomes well known or publicized, and the
5 individual has not violated any law.

6 I'm hoping that, in the future,
7 we might be able to find a solution. I wasn't
8 able to suggest an effective one today, but I
9 hope that Senator Seward will continue to look
10 into it as well.

11 ACTING PRESIDENT FARLEY: Senator
12 Dollinger.

13 SENATOR DOLLINGER: Mr.
14 President, I rise in support of this bill. I
15 commend Senator Seward for bringing it out even
16 at this stage because -- and I just address the
17 point that's made by Senator Paterson.

18 I guess we'll find out how -- how
19 Clarence Thomas -- what he thinks about this
20 bill, because he's going to get a chance in a
21 case that's currently pending before the Court
22 to find out whether the Federal Communications
23 Commission can require the cable industry to

1 pre-screen the delivery of leased access
2 programs and determine whether or not they're
3 harmful to children or indecent or obscene and
4 then require that they be set up on a
5 pre-subscriber basis. A case pending before the
6 United States Supreme Court called the Alliance
7 for Community Media against the FCC is going to
8 test the exact principle that's raised in this
9 case, whether you can pre-screen, only on a
10 pre-subscriber, pre-identified basis. The Court
11 of Appeals sitting en bloc in the District of
12 Columbia Circuit ruled that the government could
13 do that, the FCC had the power to do that, and I
14 believe if the Supreme Court upholds this they
15 will uphold this statute as well, which simply
16 says that, if you want these kinds of messages
17 -- and I agree with Senator Paterson if you're
18 an adult you may make that choice, but you
19 simply have to subscribe for them in advance
20 much like you do for any of the other
21 subscription services that are available through
22 the television system, whether it's the HBO or
23 Cinemax or the Playboy channel, you pay for

1 those in advance; you subscribe to them.

2 As adults, you can watch whatever
3 you want to watch on TV, but when we have
4 children involved, the kind of blocking
5 procedures that are encompassed in this bill, I
6 think, is a step in the right direction. It
7 sends a message that these types of messages on
8 our telephones or on our televisions are
9 objectionable, and the community can say that
10 they're objectionable.

11 Adults can watch them. Our whole
12 Penal Law is built on the notion that certain
13 types of materials in the hands of infants, it's
14 a crime. It's a crime to put infants in certain
15 types of pictures. We can continue to draw
16 those lines as a society, and I think that this
17 bill is a step in that direction, to send a
18 message about that type of speech which is
19 harmful to children and what we as a society can
20 do to discourage it from being actually given to
21 children.

22 So I support this bill and
23 commend the chairman of the committee for

1 bringing it out.

2 ACTING PRESIDENT FARLEY: Senator
3 Leichter.

4 SENATOR LEICHTER: Yes, Mr.
5 President. I'm grateful to Senators Paterson
6 and Dollinger for debating it because, frankly,
7 it got me thinking about the bill. I've
8 supported it in the past because I certainly
9 support the aim of trying to protect people who
10 are minors from the type of what seems blatantly
11 obscene messages and services that you seem to
12 get over the telephone. So I think we all agree
13 on the aim and the goal.

14 I think the question that's been
15 raised and that got me thinking about this is
16 whether this bill is the best manner and process
17 to achieve that aim. There are two concerns I
18 have, Senator Seward, as far as the mechanism
19 and system you set up if you'd be so good as to
20 yield to some questions.

21 ACTING PRESIDENT FARLEY: Senator
22 Seward, would you yield?

23 SENATOR SEWARD: Yes.

1 ACTING PRESIDENT FARLEY: Yes, he
2 will.

3 SENATOR LEICHTER: Senator, I
4 believe I'm correct, but please confirm it for
5 me, that there's hundreds and hundreds of these
6 particular messages, I guess they come through
7 900 numbers if you can -- that you can listen to
8 or access through your telephone at this time;
9 is that correct?

10 SENATOR SEWARD: I couldn't tell
11 you exactly how many. There's -- there's a
12 goodly number.

13 SENATOR LEICHTER: O.K. We're
14 talking probably well over a hundred, right?

15 SENATOR SEWARD: I -- I honestly
16 do not -- cannot give you a number.

17 SENATOR LEICHTER: No, I'm sure
18 that you haven't researched it, listened to
19 everyone but it's just that occasionally I'm
20 amazed you'll see an advertisement and there'll
21 be 40 or 50 listed just in one advertisement.

22 SENATOR SEWARD: I'm sure you're
23 accurate, Senator.

1 SENATOR LEICHTER: O.K. Now,
2 under your bill, am I correct that there's
3 somebody, I guess at the Public Service
4 Commission, that will have to make a
5 determination as to each and every one of these,
6 whether they are harmful to minors?

7 SENATOR SEWARD: That is correct,
8 Senator, under the strict and the specific
9 criteria that's under Section 235 -- within 235
10 of the Penal Law, as being described.

11 SENATOR LEICHTER: Well, let me
12 say it's the first aspect that worries me
13 because, as we all know, this is a somewhat
14 difficult criteria to apply. I mean it's not
15 the sort of thing that's clear to somebody, Oh,
16 wait. This is something that's harmful to
17 infants. Doesn't come on a neon light that says
18 it's harmful to infants. Requires a judgment
19 ordinarily, and eventually these are done by
20 courts of law. I assume that any particular,
21 whatever they're called, the people that provide
22 these messages can take their case to court and
23 say, no, they shouldn't have found, but I -- it

1 bothers me somewhat that you're going to have
2 somebody at the Public Service Commission make
3 these very subjective determinations.

4 I don't know whether they're
5 qualified to do that.

6 SENATOR SEWARD: Well, that's a
7 determination each of us would have to make,
8 Senator, but I -- I believe that the legislation
9 is giving the power to -- in the hands of the
10 right state agency here to -- that is dealing
11 with the regulation of the telephone companies
12 and it -- rather than setting up a whole new
13 bureaucracy that it is appropriate to have them
14 promulgate the rules and regulations to
15 implement the broad guidelines that are outlined
16 in this legislation.

17 SENATOR LEICHTER: Senator, I
18 don't know about a new -- setting up a new
19 bureaucracy. We're going to have a bureaucracy
20 on determining whether something is obscene or
21 not. I don't know that anybody suggests that,
22 though if a bureaucracy is required it's your
23 bill that seems to make that necessary, but I

1 have a little trouble accepting your
2 characterization of the Public Service
3 Commission as well qualified to do this.

4 They're qualified to make
5 technical decisions on providing phone service
6 and not what's harmful to children or not. You
7 might give it to a judge of the Family Court or
8 somebody works with children. I think you'd
9 have to agree that these would be people who are
10 better qualified to determine what is harmful to
11 children than a technician or an economist at
12 the Public Service Commission.

13 But let me ask you this question
14 because that really comes down to what bothers
15 me about this bill, and I want to see if there's
16 an answer to it. I'm sorry. Before that I have
17 to ask you one other question.

18 Under your bill, will you need to
19 subscribe for a PIN number or once you get a PIN
20 number, are you O.K. for any programs that are
21 considered, quote, "harmful to children" or for
22 each special 900 number, do you have to get
23 another PIN number?

1 SENATOR SEWARD: No, the one PIN
2 number would -- would cover the array of
3 messages. The importance of the PIN number,
4 Senator, is to obtain the number one would have
5 to prove that they -- provide proof that they're
6 18 years of age or older.

7 Once that proof has been
8 rendered, once someone has their PIN number,
9 that would be it. They would not -- you would
10 not have to repeat that process, right.

11 SENATOR LEICHTER: Now, let me
12 ask you, and I don't know enough about phone
13 service to be able to answer it, but would it be
14 possible for the phone company, at the request
15 of any subscriber -- I'm a parent and could I
16 call the phone company and say, Please eliminate
17 any 900 numbers -- now, it's true I may get
18 myself in the same -- in the same boat that I
19 was charging you with, because then I -- if I
20 say that it would be harmful to children, well,
21 then the phone company would be making that
22 determination. However, I may be asking them,
23 if I agree to let the phone company make that

1 determination.

2 My point is, does the technology
3 exist where the phone company says, O.K.,
4 subscriber, residential subscriber Leichter
5 called, cut him off of all the 900 numbers that
6 we consider to give sexual messages. Could the
7 phone company do that?

8 SENATOR SEWARD: Yes, they could
9 and, matter of fact, that is the thrust of the
10 previous bill that we just passed. What these
11 two bills as a package address the same problem
12 and that is giving the parents and the adults in
13 the household, so to speak, the ability to
14 control what minors living in that household may
15 be listening to over the telephone.

16 The first bill, the so-called
17 blocking bill, would do as you suggest. This
18 second bill approaches the same problem in a
19 different -- in a different way, so the answer
20 is yes. The first bill addresses that. The
21 phone company can install a blocking device in
22 terms of your telephone line.

23 SENATOR LEICHTER: Well, Senator,

1 if that's so, then we have a much simpler way
2 and one that doesn't skirt some of the
3 constitutional issues that Senator Dollinger
4 addressed our attention to. Let's make the
5 phone company to put in, I don't know, once a
6 year in every bill saying, if you wish to have
7 your phone blocked from 900 numbers, if you will
8 call, that blocking will go in effect, isn't
9 that -- isn't that a fairer way and raises -
10 doesn't raise these constitutional issues, than
11 by requiring everybody who wants to listen to go
12 in a certain sense, identify themselves, get a
13 PIN number? Why do you -- why not proceed that
14 way?

15 SENATOR SEWARD: Well, Senator, I
16 -- I would have these concerns about not going
17 the route of obtaining a PIN number and that is
18 what would prevent a minor from accessing a pay
19 telephone or any other phone that may not -- not
20 have been blocked? It seems to me that the -
21 while the blocking option is a good one, and it
22 does address a part of the problem, I believe
23 that the PIN number approach as outlined in the

1 second piece of legislation is a much more
2 comprehensive approach. That's my reading.

3 SENATOR LEICHTER: I -- I accept
4 that answer. But one -- I know we just did the
5 -- the blockage one. Will -- will that -- will
6 that be implemented in such a way that every
7 residential subscriber will be informed of the
8 ability to block all messages or the sexual
9 messages that a parent may consider offensive to
10 his or her children?

11 SENATOR SEWARD: Correct,
12 Senator. The telephone company would be
13 required to notify the customers of that
14 option.

15 SENATOR LEICHTER: All right. So
16 the first bill will do that which I was -
17 thought would be a way of dealing with it. Your
18 answer is, while that may not cover everything
19 because there's pay phones, they'll go use a
20 neighbor's phone, so yours certainly makes it
21 less likely or more difficult for children that
22 are determined to try to get this offensive -
23 these offensive messages, but it carries with it

1 the identification or forcing people to identify
2 themselves, getting a PIN number which may raise
3 constitutional grounds; and secondly, we're now
4 leaving it up to a Public Service employee to
5 determine what is harmful to children.

6 I guess that's the issue. Thank
7 you.

8 ACTING PRESIDENT FARLEY: Senator
9 Dollinger.

10 SENATOR DOLLINGER: Mr.
11 President, just to perhaps supplement the
12 chairman's comments so that Senator Leichter
13 will at least understand my position on the
14 bill.

15 The issue of whether the blocking
16 occurs in the home or whether it occurs at the
17 point of the transmission of the message was the
18 exact issue before the Court of Appeals for the
19 D.C. Circuit in the Alliance for Community Media
20 case.

21 Prior to 1992, the Federal
22 Communications Act had provided that local
23 leased access cable television programmers

1 simply had to make available to each home a
2 blocking device that you could call and request
3 to be installed on your TV, and then you could
4 block the message -- your children from watching
5 the message by electing to do it in your home.

6 In 1992, the Congress changed the
7 Federal Communications Act and said, We want to
8 provide greater protection for children and
9 families and require instead that the cable
10 operators exercise their discretion as to
11 whether or not it should be pre-subscribed; that
12 is, that you would have to call and actually ask
13 for the program to be transmitted on your leased
14 access television channel into your home. That
15 was the issue before the court and it was an
16 extensive argument made by the cable operators
17 that blocking in the home was a sufficient -
18 the least offensive constitutional way to
19 preserve everyone's constitutional rights.

20 The D.C. Circuit found in an 8 to
21 4, or 7 to 4 opinion, that in fact the Congress
22 did have the power to require the blocking to
23 occur at the time of transmission and to require

1 exactly what this bill requires, that you
2 pre-subscribe to a leased access cable channel
3 that contained material that was, under the
4 federal law, simply indecent which I think is a
5 broader standard than the standard that Senator
6 Seward's legislation selects which is the
7 "harmful to children", a standard that in my
8 opinion is a more tightly confined standard, but
9 I admit -- Senator Leichter shakes his head -
10 perhaps we don't have the best refined case law
11 on, but in my opinion it is nonetheless a
12 stricter standard to require this limitation of
13 the right to transmit these messages on, in this
14 case, your telephone line or in the case that's
15 before the Supreme Court your leased access
16 television, and I'd simply point out one other
17 thing.

18 The confidentiality that you're
19 concerned about, I think we're all concerned
20 about, but frankly when your telephone bill is
21 sent to your house, the call is listed on your
22 telephone bill, the number that you called, the
23 time that you called it and how long you were on

1 it. So to the extent that you are trying to
2 preserve absolute confidentiality on the part of
3 the recipient of these telephone messages, you
4 lose part of that when you place the call
5 because the call is logged on the telephone
6 bill. It shows up on your telephone records
7 and, as Senator Paterson pointed out, if you're
8 ever some day in a public forum looking for an
9 appointment to the Supreme Court, they could
10 subpoena your telephone records and find out
11 whether you ever dialed these numbers from your
12 home.

13 So we don't have, even under the
14 current system, sort of a complete
15 confidentiality in the ability of people to
16 access these services. It does show up in a
17 record of a public telephone company, and it
18 seems to me that the Supreme Court will give us
19 guidance on this issue and, at least from my
20 point of view, the balancing that this bill
21 strikes between the rights of an individual to
22 watch a program and our need to try to restrict
23 these messages only to adults, this is a fair

1 balancing. This bill embodies a fair balancing
2 and it should be passed.

3 ACTING PRESIDENT FARLEY: Read
4 the last section.

5 THE SECRETARY: Section 4. This
6 act shall take effect immediately.

7 ACTING PRESIDENT FARLEY: Call
8 the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 47.

11 ACTING PRESIDENT FARLEY: The
12 bill is passed.

13 Senator Skelos.

14 SENATOR SKELOS: Mr. President,
15 at this time, I'd like to take up Calendar
16 Number 139, Senate 5943, which was just reported
17 from the Rules Committee.

18 ACTING PRESIDENT FARLEY:
19 Secretary will read it.

20 THE SECRETARY: Calendar Number
21 139, by Senator Seward, Senate Print 5943, an
22 act authorizing the extension of the time for
23 the payment of real property taxes without

1 interest or penalty.

2 ACTING PRESIDENT FARLEY: Senator
3 Skelos.

4 SENATOR SKELOS: Yes. Mr.
5 President, is there a message of necessity at
6 the desk?

7 ACTING PRESIDENT FARLEY: Yes,
8 there is.

9 SENATOR SKELOS: Move to accept
10 the message.

11 ACTING PRESIDENT FARLEY: All in
12 favor of accepting the message, say aye.

13 (Response of "Aye.")

14 Those opposed nay.

15 (There was no response.)

16 The message is accepted. You can
17 read the last section.

18 THE SECRETARY: Section 4. This
19 act shall take effect immediately.

20 ACTING PRESIDENT FARLEY: Call
21 the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 47.

1 ACTING PRESIDENT FARLEY: That
2 bill is passed.

3 Senator Skelos.

4 SENATOR SKELOS: We're waiting
5 for a motion but, before we do that, is there
6 any other housekeeping at the desk?

7 ACTING PRESIDENT FARLEY: Is
8 there any other motions, announcements from the
9 floor? There's none, Senator Skelos.

10 SENATOR SKELOS: If we could just
11 stand at ease for a moment.

12 ACTING PRESIDENT FARLEY: We'll
13 just stand at ease. We're awaiting something
14 that will be coming right in shortly.

15 Senator Skelos, I believe Senator
16 Tully.

17 SENATOR SKELOS: Please recognize
18 Senator Tully.

19 ACTING PRESIDENT FARLEY: Senator
20 Tully.

21 SENATOR TULLY: Mr. President,
22 may we return to motions and resolutions?

23 ACTING PRESIDENT FARLEY: We

1 certainly may.

2 SENATOR TULLY: Mr. President, on
3 behalf of Senator Larkin, I move to amend his
4 bill, Calendar Number 84, Senate Print 5803-A,
5 by striking out the amendments made on January
6 23rd and restoring it to its original Print
7 Number 5803.

8 ACTING PRESIDENT FARLEY: The
9 amendments are struck, and the bill is returned
10 to its original print number.

11 Senator Skelos.

12 SENATOR SKELOS: Could we read
13 the last section on that bill?

14 ACTING PRESIDENT FARLEY: Read
15 the last section. Secretary will read Senator
16 Larkin's bill, which is Calendar Number 84.

17 THE SECRETARY: Calendar Number
18 84, by Senator Larkin, Senate Print Number 5803,
19 an act to amend Chapter 708 of the Laws of 1992,
20 amending the General Municipal Law.

21 ACTING PRESIDENT FARLEY: You can
22 read the last section.

23 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT FARLEY: Call
3 the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 47.

6 ACTING PRESIDENT FARLEY: That
7 bill is passed.

8 I think that concludes -- is that
9 it? Senator Skelos, I think that concludes our
10 business, sir.

11 SENATOR SKELOS: Would you
12 recognize Senator Paterson.

13 ACTING PRESIDENT FARLEY: Senator
14 Paterson.

15 SENATOR PATERSON: Thank you, Mr.
16 President.

17 There will be an immediate
18 conference of the Minority at the close of
19 session in the Minority Conference Room.

20 ACTING PRESIDENT FARLEY: There
21 will be an immediate conference of the Minority
22 in the Minority Conference Room following
23 session.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Senator Skelos.

SENATOR SKELOS: On behalf of
Senator Bruno, there being no further business,
I move we adjourn until Tuesday, January 30th,
1996 at 3:00 p.m. sharp.

ACTING PRESIDENT FARLEY: The
Senate will stand adjourned until tomorrow at
3:00 p.m. sharp.

(Whereupon at 3:50 p.m., the
Senate adjourned.)