Development, Food and Drug Administration, and related agencies programs for the fiscal year ending September 30, 1998, and for other purposes and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. SKEEN, Mr. WALSH, Mr. DICKEY, Mr. KINGSTON, Mr. NETHERCUTT, Mr. BONILLA, Mr. LATHAM, Mr. LIVINGSTON, Ms. KAPTUR, Mr. FAZIO, Mr. SERRANO, Ms. DELAURO, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2169) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conferences asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. WOLF, Mr. DELAY, Mr. REGULA, Mr. ROGERS, Mr. PACKARD, Mr. CALLAHAN, Mr. TIAHRT, Mr. ADERHOLT, Mr. LIVINGSTON, Mr. SABO, Mr. FOGLIETTA, Mr. TORRES, Mr. OLVER, Mr. PASTOR, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2203) making appropriations for energy and water development for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. MCDADE, Mr. ROGERS, Mr. KNOLLENBERG, Mr. FRELINGHUYSEN, Mr. PARKER, Mr. CALLAHAN, Mr. DICKEY, Mr. LIVINGSTON, Mr. FAZIO, Mr. VISCLOSKY, Mr. EDWARDS, Mr. PASTOR, and Mr. OBEY as the managers on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2209) making appropriations for the legislative branch for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. WALSH, Mr. YOUNG of Florida, Mr. CUNNINGHAM, Mr. WAMP, Mr. LATHAM, Mr. LIVINGSTON, Mr. SERRANO, Mr. FAZIO, Ms. KAPTUR, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2266) making appropriations for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. YOUNG of Florida, Mr. MCDADE, Mr. LEWIS of California, Mr. SKEEN, Mr. HOBSON, Mr. BONILLA, Mr. NETHERCUTT, Mr. ISTOOK, Mr. CUNNINGHAM, Mr. LIVINGSTON, Mr. MURTHA, Mr. DICKS, Mr. HEFNER, Mr. SABO, Mr. DIXON, Mr. VISCLOSKY, and Mr. OBEY as the managers on the part of the House.

MEASURES REFERRED

The following bill, previously received from the House of Representatives for the concurrence of the Senate, was read the first and second times by unanimous consent and referred as indicated:

H.R. 2035. An act to authorize the transfer of naval vessels to certain foreign countries; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THOMPSON, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 261. A bill to provide for biennial budget process and a biennial appropriations process and to enhance oversight and the performance of the Federal Government (Rept. No. 105–72).

By Mr. SPECTER, from the Committee on Veterans' Affairs, without amendment and with a preamble:

H.J. Res. 75. A joint resolution to confer status as an honorary veteran of the United States Armed Forces on Leslie Townes (Bob) Hope.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. WELLSTONE:

S. 1147. A bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage; to the Committee on Labor and Human Resources.

By Mr. D'AMATO:

S. 1148. A bill to amend title 49, United States Code, to require the forfeiture of counterfeit access devices and device-making equipment; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself, Mr. DURBIN, Mr. COVERDELL, Mr. SHELBY, and Mr. KYL):

S. 1149. A bill to amend title 11, United States Code, to provide for increased education funding, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HUTCHINSON:

S. Con. Res. 50. A concurrent resolution condemning in the strongest possible terms the bombing in Jerusalem on September 4, 1997; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 1147. A bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage; to the Committee on Labor and Human Resources.

THE SUBSTANCE ABUSE TREATMENT PARITY ACT OF 1997

Mr. WELLSTONE. Mr. President, today I rise to introduce legislation that will ensure that private health insurance companies pay for substance abuse treatment services at the same level that they pay for treatment for other diseases. In other words, it is meant to guarantee that insurance coverage for substance abuse treatment is provided in a nondiscriminatory manner. This bill, the Substance Abuse Parity Act of 1997, provides this assurance.

For too long, the problem of substance abuse has been viewed as a moral issue, rather than a disease. A cloak of secrecy has surrounded this problem, as people who have this disease are often ashamed and afraid to admit their problem, for fear that they will be seen as admitting a weakness in character. We have all seen portrayals of alcoholics and addicts that are intended to be humorous or derogatory, and only reinforce the biases against people who have problems with substance abuse. Can you imagine this type of portrayal of someone who has a cardiac problem, or who happens to carry a gene that predisposes them to diabetes?

Yet it has been shown that some forms of addiction have a genetic basis, and we still try to hide the seriousness of this problem. We forget that someone who has a problem with drugs or alcohol can look just like the person we see in the mirror, or the person who is sitting next to us on a plane. In fact, it is unlikely that any of us have not experienced substance abuse within our families or our circle of friends.

The statistics concerning substance abuse are startling. In a recent article in Scientific American, December 1996, it was reported that excessive alcohol consumption is estimated to cause more than 100,000 deaths in the United States each year. Of these deaths, 24 percent are due to drunken driving, 11 percent are homicides, and 8 percent are suicides. Alcohol contributes to cancers of the esophagus, larynx, and oral cavity, which account for 17 percent of the deaths. Strokes related to alcohol use account for another nine percent of deaths. Alcohol causes several other ailments such as cirrhosis of the liver. These ailments account for 18 percent of the deaths.

We know that alcohol and other drugs contribute to other problems as well. Addictive substances have the potential for destroying the person who is addicted, their family and their other relationships. In a 1993 Report to Congress on Alcohol and Health, the Secretary of Health and Human Services

stated that ''Alcohol is associated with a substantial proportion of human violence, and perpetrators are often under the influence of alcohol.'' There are high rates of alcohol and other drug involvement in domestic violence and child abuse. For example, in 1987, 64 percent of all reported child abuse and neglect cases in the city of New York were related to alcohol and other drug abuse. With respect to domestic violence, a study of over 2,000 American couples demonstrated that rates of domestic violence were almost 15 times higher in households where husbands were often drunk as compared to those households in which they were never drunk. And, alcohol has been shown to be present in over 50 percent of all incidents of domestic violence. In addition, substance use itself may result from direct experience with interpersonal violence, as demonstrated by a study of 472 women. This study showed that 87 percent of alcoholic women had been physically or sexually abused as children as compared to 59 percent of the nonalcoholic women in the study. We know that over 40 percent of motor vehicle crash fatalities are alcohol-related, and that many of the alcohol drinkers involved in these crashes have had long standing problems with alcohol abuse. It is estimated that over 25 percent of emergency department visits may be alcohol related, and that alcohol and other drug use accounts for at least 40 percent of hospital admissions.

Data from the 1996 National Household Survey on Drug Abuse, which is conducted by the Substance Abuse and Mental Health Services Administration, provide the following estimates of substance use in the United States:

ALCOHOL

There were about 9 million current alcohol, including beer, wine, and distilled spirits, drinkers under age 21 in 1996. Of these, 4.4 million were binge drinkers, including 1.9 million heavy drinkers.

MARIJUANA

In 1996, an estimated 10.1 million Americans were current, past month, marijuana or hashish users. This represents 4.7 percent of the population aged 12 and older.

Marijuana is by far the most prevalent drug used by illicit drug users. Approximately three-quarters, 77 percent of current illicit drug users were marijuana or hashish users in 1996.

COCAINE

The number of occasional cocaine users, people who used in the past year but on fewer than 12 days, was 2.6 million in 1996, similar to what it was in 1995. The number of users was down significantly from 1985, when it was 7.1 million.

HALLUCINOGENS

The rate of current use of hallucinogens among youth age 12–17 has nearly doubled in 2 years, 1.1 percent in 1994, 1.7 percent in 1995, and 2.0 percent in 1996.

HEROIN

There were an estimated 141,000 new heroin users in 1995, and there has been an increasing trend in new heroin use since 1992. A large proportion of these recent new users were smoking, snorting, or sniffing heroin, and most were under age 26. The rate of heroin initiation for the age group 12–17 reached historic levels.

We know what the problems are, and we can document them. But we have done little to treat the problems or prevent them. In order to decrease the violence, the domestic violence, child abuse, homicide, suicide, the motor vehicle crashes, the cancers and the other illnesses and deaths due to alcohol and drug use, we must treat the alcohol and drug abuse problems. But right now, even if treatment is available and accessible, it is often unaffordable, as many health plans do not pay for treatment for substance abuse at the same rate at which they pay for treatment of other diseases. This seems counterintuitive, given the relationship between substance use and other diseases. It would only seem logical that if we are willing to pay for the treatment of substance abuse, we would decrease costs of treatment for other diseases in the long run, as we would decrease the occurrence of those diseases that are related to substance abuse.

SAMHSA has summarized the importance of substance abuse treatment as follows:

Substance abuse adds substantially to the nation's total health care bill. Numerous studies show that providing adequate and accessible treatment for those with alcohol and illicit drug problems is the most effective method to improve the health of drug abusers and relieve the growing burden of drug-related health care costs. Treatment is a sound, long-term and cost-effective investment in America's future.

SUBSTANCE ABUSE AND HEALTH CARE COSTS

Approximately 35 percent of all AIDS cases are related to intravenous drug use, and over 60 percent of all pediatric AIDS cases are related to maternal exposure to HIV through drug use or sex with a drug user.

On the average, untreated alcoholics generally incur general health care costs that are at least 100 percent higher than those of the non-alcoholic. In the last 12 months before treatment, the alcoholic's costs are close to 300 percent higher.

More than 5 percent (221,000) of the 4 million women who give birth each year use illicit drugs during their pregnancy.

The Health Insurance Association of America estimates an expenditure of from $48,000 to $150,000 in costs of maternity care, physicians' fees and hospital charges for each delivery that is complicated by substance abuse.

The number of methamphetamine (speed)-related emergency room episodes increased by 35 percent (from 7,800 to 10,600) between the first half of 1994 and the first half of 1995.

HEALTH CARE AND TREATMENT

Chicago's Women's Treatment Center offers a wide variety of residential and outpatient programs for adolescent girls, pregnant women and women with young children. The Center has the only crisis nursery in Chicago, which provides care 24 hours a day to the infants and children of women undergoing medically supervised detoxification. As a result of the Women's Treatment Center's focus on responsible parenting, 67 drug-free babies have been born to women in treatment.

Substance abuse treatment reduces overall hospital admission rates by at least 38 percent. Hospital admissions for drug overdose decreased by 58 percent among those who had been treated.

Ninety-five percent of women reported uncomplicated births, free of illicit drugs, after one year of treatment.

The state Alcohol and Other Drug Authority in Minnesota has reported that, for chemical dependency clients, the state has saved approximately $22 million in annual health care costs by providing treatment.

So, it is apparent from these data that substance abuse treatment works, and can help reduce health care costs and costs to society. We need to ensure that health care insurance providers do not discriminate in their coverage of substance abuse treatment services.

The Substance Abuse Treatment Parity Act of 1997 provides for nondiscriminatory coverage of substance abuse treatment services by private health insurers. It does not require that substance abuse benefits be part of a health benefits package, but establishes a requirement for parity in coverage for those plans that offer substance abuse coverage.

Mr. President, my bill would prohibit private insurance providers from imposing caps, copayments, and deductibles and day and visit limits for substance abuse treatment services that differ from those that are described for other covered illnesses. In other words, private health insurers must treat substance abuse like any other disease. Covered services include inpatient treatment, including detoxification; nonhospital residential treatment; outpatient treatment, including screening and assessment, medication management, individual, group and family counseling and relapse prevention; and prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

Mr. President, the Substance Abuse Treatment Parity Act of 1997 is designed to take a large step toward decreasing the problem of substance abuse and its consequences. We can't afford not to provide this coverage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1147

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Substance Abuse Treatment Parity Act of 1997''.

SEC. 2. PARITY IN SUBSTANCE ABUSE TREATMENT BENEFITS.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—(A) Subpart 2 of part A of title XXVII of the Public Health Service Act (as added by section 604(a) of the Newborns' and Mothers' Health Protection Act of 1996 and

amended by section 703(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

"SEC. 2706. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section—

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse services' means any of the following items and services provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Non-hospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

''(f) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 713(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.

''(g) SUNSET.—This section shall not apply to benefits for services furnished on or after September 30, 2002.''.

(B) Section 2723(c) of such Act (42 U.S.C. 300gg–23(c)), as amended by section 604(b)(2) of Public Law 104–204, is amended by striking ''section 2704'' and inserting ''sections 2704 and 2706''.

(2) ERISA AMENDMENTS.—(A) Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as added by section 603(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 702(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

"SEC. 713. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section—

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse services' means any of the following items and services provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Non-hospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

''(f) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1), for purposes of assuring notice of such requirements under the plan; except that the summary description required to be provided under the last sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.

''(g) SUNSET.—This section shall not apply to benefits for services furnished on or after September 30, 2002.''.

(B) Section 731(c) of such Act (29 U.S.C. 1191(c)), as amended by section 603(b)(1) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(C) Section 732(a) of such Act (29 U.S.C. 1191a(a)), as amended by section 603(b)(2) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(D) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.''.

(3) INTERNAL REVENUE CODE AMENDMENTS.—(A) Subtitle K of the Internal Revenue Code of 1986 (as added by section 401(a) of the Health Insurance Portability and Accountability Act of 1996) is amended—

(i) by striking all that precedes section 9801 and inserting the following:

''Subtitle K—Group Health Plan Requirements

''CHAPTER 100. Group health plan requirements.

''CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS

''Subchapter A. Requirements relating to portability, access, and renewability.

''Subchapter B. Other requirements.

''Subchapter C. General provisions.

''Subchapter A—Requirements Relating to Portability, Access, and Renewability

''Sec. 9801. Increased portability through limitation on preexisting condition exclusions.

''Sec. 9802. Prohibiting discrimination against individual participants and beneficiaries based on health status.

''Sec. 9803. Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements.'',

(ii) by redesignating sections 9804, 9805, and 9806 as sections 9831, 9832, and 9833, respectively,

(iii) by inserting before section 9831 (as so redesignated) the following:

''Subchapter C—General Provisions

''Sec. 9831. General exceptions.

''Sec. 9832. Definitions.

''Sec. 9833. Regulations.'', and

(iv) by inserting after section 9803 the following:

''Subchapter B—Other Requirements

''Sec. 9811. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.

''SEC. 9811. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section—

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse services' means any of the following items and servvices provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Non-hospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

''(f) SUNSET.—This section shall not apply to benefits for services furnished on or after September 30, 2002.''.

(B) CONFORMING AMENDMENTS.—

(i) Chapter 100 of such Code (as added by section 401 of the Health Insurance Portability and Accountability Act of 1996 and as previously amended by this section) is further amended—

(I) in the last sentence of section 9801(c)(1), by striking ''section 9805(c)'' and inserting ''section 9832(c)'';

(II) in section 9831(b), by striking ''9805(c)(1)'' and inserting ''9832(c)(1)'';

(III) in section 9831(c)(1), by striking ''9805(c)(2)'' and inserting ''9832(c)(2)'';

(IV) in section 9831(c)(2), by striking ''9805(c)(3)'' and inserting ''9832(c)(3)''; and

(V) in section 9831(c)(3), by striking ''9805(c)(4)'' and inserting ''9832(c)(4)''.

(ii) Section 4980D of such Code (as added by section 402 of the Health Insurance Portability and Accountability Act of 1996) is amended—

(I) in subsection (c)(3)(B)(i)(I), by striking ''9805(d)(3)'' and inserting ''9832(d)(3)'';

(II) in subsection (d)(1), by inserting ''(other than a failure attributable to section 9811)'' after ''on any failure'';

(III) in subsection (d)(3), by striking ''9805'' and inserting ''9832'';

(IV) in subsection (f)(1), by striking ''9805(a)'' and inserting ''9832(a)''.

(iii) The table of subtitles for such Code is amended by striking the item relating to subtitle K (as added by section 401(b) of the Health Insurance Portability and Accountability Act of 1996) and inserting the following new item:

''SUBTITLE K. Group health plan requirements.''

(b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B of title XXVII of the Public Health Service Act (as added by section 605(a) of the Newborn's and Mother's Health Protection

Act of 1996) is amended by inserting after section 2751 the following new section:

"SEC. 2752. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE BENEFITS.

''(a) IN GENERAL.—The provisions of section 2706 (other than subsection (e)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

''(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 713(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.''.

(2) Section 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2)), as added by section 605(b)(3)(B) of Public Law 104–204, is amended by striking ''section 2751'' and inserting ''sections 2751 and 2752''.

(c) EFFECTIVE DATES.—(1) Subject to paragraph (3), the amendments made by subsection (a) shall apply with respect to group health plans for plan years beginning on or after January 1, 1999.

(2) The amendment made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after such date.

(3) In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made subsection (a) shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 1999.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

(d) COORDINATED REGULATIONS.—Section 104(1) of Health Insurance Portability and Accountability Act of 1996 is amended by striking ''this subtitle (and the amendments made by this subtitle and section 401)'' and inserting ''the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, and the provisions of parts A and C of title XXVII of the Public Health Service Act, and chapter 1000 of the Internal Revenue Code of 1986''.

By Mr. D'AMATO:

S. 1148. A bill to amend title 49, United States Code, to require the forfeiture of counterfeit access devises and device-making equipment; to the Committee on the Judiciary.

THE COUNTERFEIT ACCESS DEVICES ACT OF 1997

Mr. D'AMATO. Mr. President, I rise today to introduce legislation which will strike a blow against counterfeiters and other criminals who commit cellular telephone fraud and credit card fraud.

These criminal activities cost their respective industries hundreds of millions of dollars annually, and these costs are passed down to consumers who use credit cards and cellular telephones. The cellular telephone industry alone loses $650 million each year due to counterfeit or cloned telephone. The credit card industry faces a similar problem.

The criminals who perpetrate these frauds use specialized equipment to clone cell phones and credit cards to create phony copies which can be sold on the street or used to rack up thousands of dollars in unauthorized credit card purchases and telephone calls. There is no legitimate reason for an individual to possess this special equipment used to create these phony copies. This equipment is only useful to create counterfeit credit cards and cell phones.

Under current law, this equipment is actually returned to the criminal after he serves his sentence. The equipment is frequently used again to commit the same crimes over and over. The Government cannot confiscate the equipment without a separate expensive and time-consuming forfeiture proceeding.

Mr. President, it is preposterous that the Government must return the tools used to commit these crimes to criminals, even if they are convicted. These criminals are exploiting a loophole in the Federal forfeiture laws. My bill will close this loophole.

My bill would amend title 49 of the United States Code to make this equipment, as well as the counterfeit credit cards and telephones themselves, contraband. This designation would make it a Federal crime to possess these items. My bill would also require that these items must not be returned to the criminals.

Mr. President, these crimes take a tremendous toll on consumers whose telephones and credit cards are cloned by this equipment. By the time the consumer discovers that his or her telephone or credit card has been copied, the criminals usually have racked up thousands of dollars in unauthorized charges. This can have a devastating effect on consumers' credit ratings, rendering them unable to purchase a car or home or start a business. These problems can take years to correct.

Last Congress, I introduced a similar bill, S. 1380. Unfortunately, the session ended before Congress was able to act. However, this bill is not without precedent. A similar measure was passed last year regarding counterfeit videos and music. These items are now considered contraband under the new law. Industry leaders and law enforcement authorities enthusiastically support this legislation.

Mr. President, the Government must stop unwittingly aiding criminals to swindle hundreds of millions of dollars at the expense of consumers and the cellular telephone and credit card industries. My bill would close this outrageous loophole and help law enforcement crack down on these brazen criminals.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FORFEITURES RELATING TO COUNTERFEIT ACCESS DEVICES.

Section 80302(a) of title 49, United States Code, is amended—

(1) in paragraph (5), by striking ''or'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(7) a counterfeit access device or any device-making equipment (as those terms are defined in section 1029 of title 18).''.

By Mr. GRASSLEY (for himself, Mr. DURBIN, Mr. COVERDELL, Mr. SHELBY, and Mr. KYL):

S. 1149. A bill to amend title 11, United States Code, to provide for increased education funding, and for other purposes; to the Committee on the Judiciary.

THE INVESTMENT IN EDUCATION ACT OF 1997

Mr. GRASSLEY. Mr. President, I rise today to introduce the Investment in Education Act of 1997. This bill will close gaping loopholes in the current bankruptcy code which allow companies that declare bankruptcy to cheat schools out of badly needed education funds. This bill has the support of Senator DURBIN, the ranking member on my subcommittee. In an effort to work in a truly bipartisan way, I have reached out to the administration and have made several changes in the bill to accommodate the White House. As of now, I have received very positive signals from the administration and I'm optimistic that the administration will come out in favor of the bill.

As we all know, our Nation's educators face difficult challenges every day, whether from crumbling facilities or classes that are too large because a school district can't afford additional teachers. Money won't solve every one of the problems facing our schools. But protecting funding for education from losses due to bankruptcies will do a great deal of good. That's why I believe that the Congress should enact the Investment in Education Act quickly to stem a federally created drain on already scarce education resources.

As President Clinton has said, the era of big Government is over, and we have a responsibility in Congress to make certain that Federal laws—like the bankruptcy code—do not tie the hands of State and local governments. My bill will close bankruptcy law loopholes and provide millions of education dollars without raising taxes or spending any additional Federal money.

Under current law, the bankruptcy code allows a Federal judge to retroactively lower the assessed value of a bankrupt debtor's property—often in

direct conflict with State laws. And another part of the bankruptcy code artificially subordinates local property tax revenues.

All of this lowers the amount of money available for education since education is overwhelmingly dependant on local property tax revenue. In fact, there have been instances in which school districts have had to refund money they have already received and spent. In this way, the bankruptcy code is taking money earmarked for education and spending it instead on administrative costs such as lawyers' fees. We need to close these loopholes to put kids, and not bankruptcy lawyers, at the top of our Nation's priorities.

During a hearing which I chaired before the Subcommittee on Administrative Oversight and the Courts, I found out about a school district in Texas that lost enough money in one case to provide 375,000 meals for needy children. And I heard testimony about a school that could not rebuild its kindergarten which had been destroyed by a tornado as a result of money lost in a bankruptcy case earmarked for the school. In the State of Texas alone, between just a few school districts, about $70 million earmarked exclusively for education are currently at risk. Because the Administrative Office of the United States Courts does not keep comprehensive records on this, we don't know how big this problem is. But we know that it's a substantial problem. I say let's fix it now.

The Investment in Education Act will close these bankruptcy loopholes so that there will be more money for meals for needy children, more money to pay for teachers' salaries, and more money to repair dilapidated schools. By passing my bill, we can ensure that our schoolchildren get the education dollars they need.

Finally, section 3 of the Investment in Education Act will be of great help to children who are owned back child support. Section 3 of the bill will permit children and spouses to go into the exempt assets of the bankrupt debtor in order to make sure that unscrupulous deadbeats can't get out of paying child support by hiding their assets in bankruptcy. I don't think that Congress ought to let the bankruptcy code stick it to kids and so my bill corrects that.

This bill has bipartisan support and has been endorsed by the National School Boards Association and the Iowa Association of School Boards. And as I mentioned earlier, I am optimistic that the administration will come out to support the bill. I know that time may be short, but since this bill has bipartisan support, I hope that we can pass it quickly. Mr. President, I have several letters supporting my bill and several news articles regarding the negative effect of bankruptcy on education. I ask that they be entered into the RECORD and that the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Investment in Education Act of 1997''.

SEC. 2. TREATMENT OF CERTAIN LIENS

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title''; and

(2) in subsection (b)(2), after ''507(a)(1)'' and before the comma following thereafter insert ''(except that such expenses, other than claims for wages, salaries or commissions which arise after the filing of a petition, shall be limited to expenses incurred under Chapter 7 of this title and shall not include expenses incurred under Chapter 11 of this title)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate which has arisen by virtue of state law, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.''.

''(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this Section, claims for wages, salaries and commissions entitled to priority under Section 507(a)(3) or claims for contributions to an employee benefit plan entitled to priority under 507(a)(4) may be paid from property of the estate which secures a tax lien, or the proceeds of such property subject to the requirements of Subsection 724(e).''

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax real or personal property of the estate if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 2. ENFORCEMENT OF CHILD AND SPOUSAL SUPPORT.

Section 552(c)(1) of title 11, United States Code, is amended by inserting ''provided that, notwithstanding any federal or state law relating to the enforcement of liens or judgments on exempted property, exempt property shall be liable for debts of a kind specified in Section 523(a)(5) of this title,'' at the end of the subsection.

IOWA ASSOCIATION OF
SCHOOL BOARDS,
Des Moines, IA, September 2, 1997.

Hon. CHARLES E. GRASSLEY,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: I am writing to thank you for introducing and sponsoring ''The Investment in Education Act of 1997''. This important legislation will pump millions of badly-needed dollars into schools by closing loopholes in the federal bankruptcy code which unscrupulous debtors use to avoid paying delinquent property taxes. These delinquent taxes go to fund important education programs such as school lunch programs for needy children and school construction and renovation projects. Thus, a loss of these revenues mean fewer school lunches, school buildings in disrepair and fewer teachers, since property tax revenues also fund teachers' salaries.

This federally created drain on local revenues intended for education, if not checked in the near future, will obviously have a devastating impact on our ability to provide our children with a quality education. Companies which declare bankruptcy should not be allowed to use federal law to shortchange our children's education.

With the federal government turning more power over to the states, Congress has the responsibility to remove federal laws—like these bankruptcy loopholes—which tie the hands of local government. ''The Investment in Education Act of 1997'' is a step in that direction. It increases education funding by returning lost revenue to schools instead of raising taxes and without sending local revenues to Washington.

On behalf of Iowa's 377 school districts, thank you for your leadership in finding a solution to this problem.

Sincerely,

RONALD M. RICE, E.D.,
Executive Director.

OFFICE OF
SIOUX COUNTY TREASURER,
Orange City, IA, July 29, 1997.

U.S. Senator CHARLES GRASSLEY,
ATTENTION: John McMickle,
Senate Hart Building,
Washington, DC.

DEAR MR. MCMICKLE: Thank you for taking the time to discuss the issues and concerns regarding bankruptcy and its affect on local taxing bodies here in Iowa.

I have been following with interest the proposed changes to the Federal Bankruptcy statutes as presented by the National Association of County Treasurers and Finance Officers (NACTFO) and concur with the findings and recommendations in their report. I believe that you have a copy of the report, entitled ''Local Governments Recommendations for Reform of the United States Bankruptcy Code''.

Following our conversation of July 23, I did send an e-mail message to all County Treasurers in Iowa, requesting information on the affect of bankruptcy on tax collections. To date, I have had a limited response to that request. Approximately ten percent of the treasurers have contacted me. Overall, their indications are that the statutes do not present any big problems in Iowa. The main concern would be the delay in payment of the taxes due.

An example here in Sioux County is to the point. In the Boyden-Hull School District, $13,457 in taxes remain uncollected due to bankruptcy by two property owners. $7,806 of this amount due is to go to the local community school district, if and when collected. These dollars are needed by the local school to keep programs running.

We have been fortunate in the Iowa Bankruptcy Courts to not have any judges that want to adjust amounts due on our priority claims for taxes. We have usually received the amounts that we file with the courts, although usually without interest due to late payment.

My reading of the proposed changes indicates that the judges would not have the latitude to change amounts due, nationwide, and that would serve us well. Both of the

cases affecting the Boyden-Hull School District are filed outside of Iowa and we are at the mercy of the local bankruptcy judges on collection.

Thank you for your interest in the affect of this legislation at the local level. If I may answer any further questions that you or the Senator would have, please contact me.

Sincerely,

ROBERT R. HAGEY,
Treasurer.

POLK COUNTY ATTORNEY,
Des Moines, IA, July 31, 1997.

Senator CHARLES E. GRASSLEY,
Chairman, U.S. Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: John McMickle of your office was kind enough to send me a copy of your proposed ''Investment in Education Act of 1997'', amending sections 724(b) and 505(a) of the Bankruptcy Code. I do not practice regularly in Bankruptcy and so may not be as qualified to comment as many of the people you will be hearing from, but I do represent Iowa's largest county in its attempts to collect overdue property taxes in those situations where Bankruptcy Court involvement is unavoidable. I would strongly support your attempt to reduce the impact on local governments of the Bankruptcy Code's artificial lien priority shifting and pre-emption of state law.

As you know, because of Iowa's consolidated tax system, a County is responsible for collecting taxes not only for itself but for the cities, school districts and other public bodies in the jurisdiction. The Treasurer is an involuntary creditor. He or she cannot evaluate and react to lending risks the way a normal creditor can. The Treasurer cannot police the debt or collateral or take additional steps to protect the County when a debtor is in trouble. Taxes are limited, so the County cannot build a reserve fund if it sees danger ahead. It is difficult to reduce general relief or quit collecting garbage or layoff teachers when economic conditions result in delayed tax collections. That is often when people look to government for additional assistance.

In Iowa, state law requires a wait of 21 months or more after a missed September local tax payment before property can be taken to pay the tax debt. This is reasonable protection for property owners who may be in trouble. Government is, after all, a service, not a business trying to make money off of the debt. Our procedure does, however, often result in local taxes being put off while other more aggressive creditors are paid. To then allow these creditors priority over local taxes, as the present section 724(b) does in many instances, seems eminently unfair. These junior lienholders were aware of tax priorities at the time they took their liens and to allow them to jump over local government seems, to me, to be a pure windfall. Your bill would correct this by keeping everyone in the same lineup to which they originally agreed.

We have had particular problems dealing with out of state bankruptcies involving Iowa properties but courts which do not understand the Iowa tax system and the fact that property is valued for tax purposes twenty-one months ahead of the first payment based on that value. We have often lost moderate payments simply because we cannot fly off to another state or hire a lawyer there to explain our case. Your proposal to reduce the impact of section 724(b) would also indirectly, but greatly, benefit Iowa local governments in this regard.

Finally, as to your proposal to limit the retroactive impact of section 505(a), I can only say that in my own experience I have found this section to be used primarily as a negotiating tool by debtor and junior creditor lawyers in Chapter 11 cases, who use the threat of redetermination to browbeat the County into compromising taxes to provide a larger income stream for junior lienholders. I strongly support your bill's effort to limit the impact of this section on local government as well.

Thank you for your consideration and good luck in convincing your associates of the desirability of your proposals.

Very Truly Yours,

MICHAEL J. O'KEEFE,
Assistant Polk County Attorney.

SCHOOLS TURN TO INCOME TAX—MOST DISTRICTS ALREADY CHARGE AN INCOME SURTAX. SHOULD DES MOINES JOIN THEM?

Iowa school districts increasingly are turning to a new tax—an income surtax—to supplement the property taxes and state aid they've long relied on.

A movement is under way for Des Moines to join the trend.

The school-district income surtax may not be familiar everywhere. It has not been used by the schools in most of Iowa's largest cities, but 204 of the state's 379 school districts now use it to raise extra money for education.

It's a simple concept that can raise a lot of cash for classroom programs, new school buses, asbestos abatement, routine maintenance, and remodeling. It works this way: A school district approves a levy(ies) for one or more of those purposes, either by a vote of the school board or citizens, and designates the income surtax as a source of revenue.

Each person in the district who pays state income taxes is then charged an additional amount to meet that obligation—up to 20 percent of his or her state income-tax bill. On a state tax bill of $200, at the maximum 20 percent rate, you'd send the state an extra $40 to be returned to your school district. (Counties may also use the income surtax for emergency medical services. Taxpayers who live where both their school district and county have an income surtax don't pay more than 20 percent combined.)

Think of the income surtax as a tip-automatically tacked onto a restaurant tab, and districts have been increasingly hungry for it.

Why? Growing pressure on their budgets, including higher expectations in general, more low-income students who need help to succeed and aging buildings that need to be renovated or replaced.

Iowa law first allowed use of the income surtax for school districts in 1972, under restricted circumstances. Use of the income surtax increased after lawmakers OK'd an ''enrichment levy'' in 1975, which let school districts spend extra local money on educational improvement through either the income surtax, property taxes or both. But the explosion in the number of districts with an income surtax came when the ''instructional support levy'' replaced the enrichment levy in 1991, with state money part of the bargain.

From Ackley-Geneva to Woodbury Central—and in districts like Ames, Decorah and Sioux City—the income surtax raised a total of $27.2 million statewide for the 1996–97 school year that ended June 30. That compares to $1.9 million just 10 years earlier. Of that $27.2 million, $24.6 million went to the instructional support levy (which also got $43.3 million in property taxes and $14.8 million in state money, with the state paying less now than it originally promised).

The income surtax raised another $72,000 for the educational improvement levy, a one-time opportunity for school districts to boost their budgets that could be put in place only in the 1991–92 school year and continued until rescinded by the school board. (Just four districts have it). The income surtax raised nothing in 1996–97 for the asbestos levy. It raised $2.5 million for the physical plant and equipment levy.

Who has the income surtax? Rural school districts predominantly, where the push for it began as a way to reduce reliance on property taxes and keep school budgets healthy, although plenty of cities participate. Iowa City, for example, raised the most—$2.6 million—this past school year for the instructional support levy. In the immediate Des Moines area, only the Bondurant-Farrar, Southeast Polk and North Polk school districts have the income surtax.

The surtax has been proposed for the Des Moines school district as a means to move ahead the $315 million Vision 2005 plan for updating its 63 buildings.

Residents of the Des Moines district paid $124.5 million in state income tax in 1996. Based on that year's incomes, each 1 percent of surtax would bring in about $1.2 million for the school district. The talk is of needing nearly $12 million annually from the surtax, which would require nearly a 10 percent rate.

Part of the appeal of the income surtax is that it spreads the tax burden more equitably than property taxes or sales taxes, and businesses are likely to support it since they don't pay it. Part of the drawback is that it stands to increase the differences in tax burdens among local school districts, perhaps putting Des Moines at a further competitive tax disadvantage.

Somehow Des Moines has to settle on a way to come up with money it needs for its schools, and a tax increase of some sort is inevitable.

Whether that ought to include the income surtax needs a careful look, one taken knowing that many other Iowa communities have found that it works for them.

[School Board News, Aug. 19, 1997]

SCHOOLS LOSE WHEN FIRMS GO BANKRUPT

Your school system might be missing out on thousands of dollars every year because corporations involved in bankruptcy proceedings are able to get their tax obligations cut.

The Dallas public school system, for example, is losing $450,000 during the current year, due to a federal law that makes it virtually impossible for school districts to collect tax revenue from businesses that have declared bankruptcy.

Accordingly to Dallas Superintendent Yvonne Gonzalez, the district could have used this money to hire 15 extra teachers to reduce class sizes or provide $150 in school supplies for more than 3,000 teachers. ''We anticipate an equal or greater loss each year for the foreseeable future,'' she says.

That's because Dallas, like most local school districts across the nation, depends heavily on ad valorem taxes, which are assessed on businesses and individuals based on the value of property.

When businesses declare bankruptcy, however, school districts and other local governments tend to be last in line to collect the back taxes owed by property owners. Lawyers and banks holding mortgage liens are paid first. As a result, schools often never see the money they are owed, and in some cases, are required to refund taxes already received.

NSBA supports federal legislation to correct this problem. The Investment in Education Act would amend the federal bankruptcy code to increase local revenues derived from property taxes.

The Senate Judiciary Committee's Subcommittee on Administrative Oversight and

the Courts held a hearing on the bill Aug. 1. The bipartisan measure will be formally introduced in September by subcommittee chair Charles E. Grassley (R-Iowa) and Sen. Richard J. Durbin (D-III).

A description of the bill prepared by Sen. Grassley's office notes that ''virtually every state has experienced some revenue shortfall'' in school funding, due to two provisions in the bankruptcy code. The issue has been getting a lot of attention in Texas lately, however, because the state experienced so many real estate bankruptcies in the early 1990s.

Elizabeth Weller of the Dallas law firm Blair, Goggan, Sampson and Meeks notes that the Houston school district lost $1 million in a single case. Weller, who represents some 200 clients on this issue, a third of whom are Texas school districts, adds that in the past few years, the Fort Worth Independent School District (ISD) lost more than $480,000 in a total of four cases; the Dallas ISD lost nearly $450,000 in six cases; and the Lake Worth ISD $357,000 in a single case.

Section 505(a) of the bankruptcy code gives bankruptcy judges broad power to overrule property valuation decisions. This means a judge can decide to reduce a business's tax burden to ensure that the company's debtors can receive more of what they are owed.

Debtors often seek to have the taxable value of property reduced for as much as 10 years before the bankruptcy filing and request a refund of taxes already paid. Current law allows judges to approve these requests.

The bill would amend Section 505(a) to permit a bankruptcy court to reverse a property valuation decision only when the bankruptcy debtor has the right to challenge such a decision under applicable nonbankruptcy law.

Section 724(b) requires that most other claims on a bankruptcy estate be paid before ad valorem liabilities. Thus, various expenses, including lawyers' fees, are paid before and at the expense of tax liabilities, eventually forcing local jurisdictions to accept much less in delinquent back taxes than they would otherwise be entitled to receive—if they receive anything at all.

The bill would amend Section 724(b) to provide that ad valorem taxes protected by liens are paid ahead of other expenses, increasing the likelihood that local jurisdictions receive the same revenues they would have received if the company didn't file bankruptcy.

''My clients are sympathetic to wage claimants and others holding priority claims'' under the bankruptcy code, Weller says. They are citizens that serve and protect,'' she says. School districts are not asking for a special priority; they just want to be treated like any other creditor.

Weller says there's been ''definitely a lot more cases'' on this issue in the past few years, even though there hasn't been an increase in corporate bankruptcies as there has among individuals. What has changed in that ''corporate attorneys have become more aware of how they can use the law to avoid paying taxes.''

One of several examples cited by Weller involves the bankruptcy of Merchants Fast Motor Lines. Taxes secured by liens on personal property were reduced by a bankruptcy court's application of Sections 505(a) and 724(b).

That resulted in five county governments, three city governments, and the school districts of Dallas, Houston, and Irving losing a total of more than $70,890. The taxing entities face the threat of additional tax losses when the properties are sold.

In some cases, a bank holding the mortgage on a property demands that the seller declare bankruptcy so the taxes will be reduced, thus increasing its profits from the sale.

That's what happened to the Hurst Euless Bedford Independent School District in Texas, which filed suit in state court in May 1992 to collect delinquent taxes for a company for 1989 and 1990.

The day before the case was set to go to trial, the debtor filed bankruptcy, attorney Barbara M. Williams said at the hearing. The company succeeded in getting the taxes reduced for 1989 and 1990, even though the debtor did not foreclose upon the property until 1991. The property value was reduced more than $1.5 million, and the school district lost more than $61,000 in tax revenue. The debtor then filed a motion to dismiss the bankruptcy.

A single bankruptcy can have a major impact on a small school district. For example, when the Lancaster, Texas, school district was involved in a legal battle over the bankruptcy and foreclosure of a country and western bar, it succeeded in obtaining $150,000 in back taxes, Weller notes. That money was enough to restore kindergarten for the district's schoolchildren, which had been eliminated when the school suffered severe tornado damage.

LANCASTER INDEPENDENT SCHOOL DISTRICT,
Lancaster, TX, July 28, 1997.

Senator CHARLES E. GRASSLEY,
Senate Judiciary Committee,
SH–325 Hart Senate Office Building,
Washington, DC.

RE: Proposed Changes to Bankruptcy Code §§ 724(b) and 505.

DEAR SENATOR GRASSLEY: I am very pleased to write this letter in support of your efforts to modify the Bankruptcy Code to make revenue recovery easier for local governments. As a small suburban school district, the Lancaster Independent School District has felt the effects of debtors using bankruptcy as a way to avoid paying ad valorem taxes. In one particular case, a debtor avoided payment of taxes for almost ten years before the tax-laden property was sold through a bankruptcy plan to a new owner who paid the taxes. As a result of this account being resolved, the School District collected more than $130,000 and was able to fund fullday kindergarten. I am attaching an article from our local newspaper that describes the importance of the payment of this account.

Although the example I have given would not have been specifically affected by your proposed changes to the Bankruptcy Code, it represents the types of issues facing local governments who cannot collect essential revenue because of abuses of the bankruptcy process by property owners. In our case, the issue was much more than a matter of an individual paying his fair share of taxes. For Lancaster ISD, this was a matter of whether or not we could provide essential public services.

Thank you very much for your actions on behalf of local governments. Please let me know if I can provide any additional assistance in this effort.

Sincerely,

BILL WARD,
Superintendent.

[Today Lancaster, Aug. 10, 1997]

MONEY IN THE BANK—LISD RECEIVES BIGGEST BACK TAXES PAYMENT

(By Chuck Bloom)

Gary Faunce is a happy man. Happier than usual.

The Lancaster school district top finance man is breathing a little easier with an infusion of more than $133,000 in back taxes paid by the LISD's most notorious delinquent account.

Bear Creek/GID II, representing the Crystal Chandelier, delivered payment of $133,377 July 24 to the district's tax attorneys, Blair, Coggan, Sampson and Meeks, closing out a ''difficult chapter'' in the district's financial life, Faunce said.

''This helps us make next year's budget and it certainly lifted us through this year's budget.'' he said. ''It has been very helpful to fund a few programs.''

Faunce said much of the funds would be earmarked to cover the cost of full-day kindergarten in the LISD, which begins this Monday for all 5-year-olds.

The Crystal Chandelier, located at Bear Creek Road and I–35, was purchased by John Drain earlier this year, and worked with BGSM to resolve the delinquent tax problem.

''With the property in the hands of a new owner, we are hopeful that it will remain off the delinquent tax roll,'' said Nancy Primeaux, BGSM regional manager. She said her firm would monitor the GID account ''to ensure the property's prior history is not repeated.''

In addition, the district received $6,915 from Jordan Tractor and Marine, plus payment on five other accounts, Primeaux said.

Needham Carpets, which is subject to seizure activity, had its bankruptcy filing dismissed ''with prejudice'' by the Bankruptcy Court. The ruling prevents Needham from filing for bankruptcy for the next 12 months, and BGSM can proceed with its litigation and seizure efforts.

The LISD has been working under an extremely tight financial cloud, due in part to the large amount of back taxes owed.

NORTH CAROLINA LEAGUE OF MUNICIPALITIES,
August 14, 1997.

Hon. LAUCH FAIRCLOTH,
317 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FAIRCLOTH: We are aware of proposed amendments to the Bankruptcy Code that will ensure better local tax collection and administration when a taxpayer files for bankruptcy. We support these amendments, included in Senator Grassley's Investment in Education Act of 1997, that amend Sections 724 and 505(a)(2) of Title 11 of the US Code.

The amendment to Section 724 will prevent the property tax lien from being subordinated to other liens when property is sold free and clear of liens during bankruptcy. This is already the case under North Carolina law, as has been held and affirmed by our courts, if the tax collector reads the notice carefully enough to understand there is to be a sale free and clear of liens and if the collector knows to contact the city or county attorney and request that an objection be filed to the sale.

Under existing Section 505, a bankruptcy court can redetermine the value of property for tax purposes and recompute the tax owed, if the debtor had not appealed the value to the Board of Equalization and Review, and this is true even though the time for making an appeal to the Board has expired. This has happened in several cases in North Carolina, and the taxes were always recomputed downward. The proposed amendment to Section 505 prohibits a bankruptcy court from making this reassessment if the time for making an appeal under state law has expired.

We appreciate your consideration and, in the interest of more equitable property tax collection and administration, we feel these are good amendments and would request your support. Would you please share your position on the amendments?

Sincerely yours,

TERRY A. HENDERSON,

Director of Advocacy.
S. ELLIS HANKINS,
Executive Director.

THE OFFICE OF SALT LAKE COUNTY ATTORNEY, DOUGLAS R. SHORT, COUNTY ATTORNEY,
July 29, 1997.

Attn: John McMickle.
Re amendments to 11 U.S.C. §505 and 724(b).
Hon. CHARLES GRASSLEY,
U.S. Senator, Subcommittee on Administrative Oversight and the Courts, 308 Senate Hart Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: Salt Lake County's tax revenue, including those of the several school districts located within the county, has been adversely affected by 11 U.S.C. §§724(b) and 505. Both provisions discriminate unfairly against governmental entities and take needed governmental and school revenue and shift it to other creditors of the estate.

For example, because 11 U.S.C. §505 permits the bankruptcy court to redetermine the value of property for tax purposes, Salt Lake County and schools have lost substantial tax revenue because debtors have been permitted to challenge assessments without the necessity of complying with state law.

In one chapter 11 proceeding Salt Lake County and the school districts lost $61,800 due to the provisions of 11 U.S.C. §505. In another chapter 11 proceeding the debtor attempted to obtain a refund of taxes paid three years prior to the bankruptcy filing and one post-petition year totaling approximately $80,000. The county settled after the trustee agreed to drop his pre-petition refund but lost approximately $18,000 which the Trustee would not have been entitled to under state law. Further, in 1996 the county and school districts lost another $13,500 in a chapter 7 proceeding because of section 505 jurisdiction. The above actions could not have been brought had state law applied.

Title 11, U.S.C., §724(b) is often used in this jurisdiction to take county and school district tax money and shift it to administrative expense and other priority claimants. It should be eliminated or limited to federal statutory liens. It is evident from the legislative history of §724 and its predecessors that Congress never contemplated the impacts of shifting local property tax revenue away from schools and local governments, which provide police and fire protection and other essential services to estate property, to other creditors such as chapter 11 administrative expense claimants and lienholders junior to the tax liens.

Thank you for considering the foregoing issues. Unfortunately we are not able to present this in person. However, your assistance is appreciated.

Sincerely,
MARY ELLEN SLOAN,
Deputy Salt Lake County Attorney, Civil Division.

TREASURERS' ASSOCIATION OF VIRGINIA,
July 29, 1997.

Re Investment in Education Act of 1997.
U.S. Senator CHARLES GRASSLEY,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: I am writing on behalf of the Treasurers' Association of Virginia to express our support for the Investment in Education Act of 1997. The membership of the Treasurers' Association consists of over 180 county, city and town treasurers throughout the Commonwealth of Virginia. In Virginia, the local treasurer is responsible for the receipt and collection, safekeeping and investing, accounting and disbursement of local government revenue.

Of primary importance to our members is the retention of an effective ad valorem tax lien on real property. This lien is paramount to all other debts under Virginia law. In giving this lien the ultimate priority, the Virginia legislature recognized the importance of real property taxes to Virginia localities. Real property taxes are an indispensable method of funding government functions including schools, police and fire protection, sanitation and other essential government services. Under the current bankruptcy scheme, however, this first priority lien can be negated by a bankruptcy trustee acting pursuant to §724(b).

The legislation which you have proposed would rectify this anomaly of the Bankruptcy Code. This legislation would exempt a "properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property . . ." from the scope of §724(b). This amendment is consistent with the original legislative history of this subsection, and reflects the primary importance of ad valorem taxes and tax liens in the operations of local government.

Sincerely,
KEVIN R. APPEL,
Counsel.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. MOYNIHAN, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 22, a bill to establish a bipartisan national commission to address the year 2000 computer problem.

S. 25

At the request of Mr. FEINGOLD, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 25, a bill to reform the financing of Federal elections.

S. 61

At the request of Mr. LOTT, the name of the Senator from Kansas [Mr. ROBERTS] was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 89

At the request of Ms. SNOWE, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 358

At the request of Mr. DEWINE, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Louisiana [Ms. LANDRIEU] were added as a cosponsors of S. 358, a bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

S. 493

At the request of Mr. KYL, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 493, a bill to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia.

S. 507

At the request of Mr. HATCH, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 507, a bill to establish the United States Patent and Trademark Organization as a Government corporation, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes.

S. 623

At the request of Mr. INOUYE, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 623, a bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs.

S. 657

At the request of Mr. DASCHLE, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 657, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with veterans' disability compensation.

S. 675

At the request of Mr. MCCONNELL, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 675, a bill to amend the Internal Revenue Code of 1986 to modify the application of the passive loss limitations to equine activities.

S. 769

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 769, a bill to amend the provisions of the Emergency Planning and Community Right-To-Know Act of 1986 to expand the public's right to know about toxic chemical use and release, to promote pollution prevention, and for other purposes.

S. 836

At the request of Mr. ABRAHAM, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of S. 836, a bill to offer small businesses certain protections from litigation excesses.

S. 995

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 995, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 1031

At the request of Mr. GRASSLEY, the names of the Senator from Alabama