AMENDMENT NO. 2446, AS MODIFIED

The PRESIDING OFFICER. The question is now on the McCain amendment No. 2446, as modified.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, so Members will have some idea—maybe a little better than I do—as to exactly how we are going to proceed——

Mr. FORD. May we have order, Mr. President, to listen to the majority leader?

The PRESIDING OFFICER. Let's have order in the body, please.

Mr. LOTT. I believe the pending business is the McCain amendment. Senator MCCAIN had hoped he could have a recorded vote on his amendment, but I know it has unanimous support. Because a number of Senators are having problems with schedules, Senator MCCAIN has agreed that we will go ahead and have a voice vote on his amendment. I thank him for that cooperation. I know he feels very strongly about it, and it is the right thing to do for the veterans of our country. So that will be then the next order, the voice vote.

Mr. DASCHLE. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. Can we please have order in the body? The majority leader has the floor and is discussing important business. May we please have order in the body?

Mr. LOTT. After the McCain amendment is unanimously accepted, I am sure there will be some further general debate or discussion about the tobacco bill, and we will work then on exactly the time we will come in on Thursday and when the first votes will occur with regard to the Durbin amendment or the Gramm amendment, or if they agree to set them aside so we can go to other business we will make that announcement either later on tonight or tomorrow during the day, even though we will be out. We will put it on the recording so Senators will know.

There will not be, it doesn't appear at this time, an early vote on Thursday, but we do hope to get a couple votes before noon on Thursday. We will be working on that. We will do this by voice vote, and that will be the last vote for the night.

Mr. CHAFEE. Mr. President, I wonder, if I can ask the majority leader a question.

Mr. LOTT. Mr. President, just to make clear, that will be the last recorded vote for tonight. We may be able to do other business by unanimous consent. I didn't want to leave the wrong impression there.

Mr. CHAFEE. Mr. President, if I can ask the majority leader, it is my understanding that there will be an effort to hot line the technical corrections on the transportation legislation.

Mr. LOTT. There certainly will be, Mr. President. It is very hot. We are trying to get it done before it gets worse. I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the McCain amendment No. 2446.

The amendment (No. 2446), as modified, was agreed to.

Mr. ROCKEFELLER. Mr. President, I am pleased that my colleagues have agreed to secure a small piece of the tobacco revenue to improve veterans' access to health care. The amendment offered by my colleague, Senator MCCAIN, is similar to an amendment I had planned to offer which would have set aside $2.7 billion for veterans health care; and I am delighted that he shares my views on this matter. In my view, given the significant increased costs of providing VA health care due to smoking-related illnesses, it only seems fair to do something to fortify the veterans' health care system.

Specifically, this amendment, Amendment No. 2446 to S. 1415, would dedicate $600 million per year of the spending included in the tobacco bill to help reimburse VA for their smoking-related expenses and expand access for direct smoking-related services to other veterans.

I want to talk about the amount of funding for the moment. I arrived at this formula because the VA's increased costs due to smoking are about 7 percent of the estimated total federal health care costs due to tobacco-related illnesses.

This amendment is really a modest one. I ask my colleagues to look at the estimates for VA's cost of providing smoking-related health care. In 1997, VA spent $3.6 billion, and over the next five years, will spend $20 billion.

I believe many of my colleagues would be surprised to learn that VA spends so much. But it is true. Veterans have a very high prevalence of smoking-related diseases and illnesses, because as young servicemembers, they were encouraged to smoke by the military and became addicted. Let me remind my colleagues that the military distributed free cigarettes in C-rations and K-rations and sold tobacco products at vastly reduced prices to service members, a practice that continued until very recently.

And in the aggregate, veterans are older, and, therefore, the long-term effects of smoking are likelier to have taken a toll on their health status.

To put it all in perspective, we are not asking our colleagues to approve an amendment to completely reimburse VA for their full health care costs—though many believe this would be justified. No, this amendment would be limited to just a fraction of VA's true costs—approximately 15% of what they are actually spending taking care of veterans afflicted by diseases and illnesses caused by smoking.

Quite obviously, providing tobacco-related health care places a tremendous financial burden on the VA health care system. I want to make one thing perfectly clear: because of limited resources, the VA health care system is not and has never been accessible to any veteran who walks in the door. There is no entitlement to health care for all veterans.

Because all of the health care provided at VA hospitals and clinics is subject to the availability of funding, VA enrolls veterans according to certain priorities. Those veterans with service-connected disabilities, or low incomes, or those who are members of certain groups, like former prisoners of war, are enrolled first, and second, and third, and so on.

With an essentially frozen budget, when VA covers the health care costs for smoking-related care, it means that other veterans are denied care.

Though modest, the amendment would do wonders to VA's ability to provide more health care to veterans. Some 240,000 veterans who would not gain access to VA's health care system would now be able to see VA doctors and nurses. Veterans dying of smoking-related illnesses could spend their final days in VA hospices.

Finally, Mr. President, I find it quite ironic that this amendment comes on the heels of the elimination of a $16 billion existing veterans' benefits to offset funding in the highway bill. That particular battle has been lost, and nothing can make amends for cutting an existing veterans benefit to pay for highways. Though the damage is done, I am pleased that my colleagues have chosen with this amendment to provide a measure of security for veterans and the health care system dedicated to serve their needs.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TEA–21 RESTORATION ACT

Mr. WARNER. Mr. President, there has been a concerted effort by the majority leader and the Democrat leader, Chairman CHAFEE, myself, and the distinguished ranking member, Mr. BAUCUS, to try and get a voice vote tonight on a technical corrections bill to the ISTEA legislation which was adopted by the Senate just before we went on recess. I regret that we are not going to be able to handle that matter tonight.

But a part of that very important Technical Corrections Act would address an error that was made in the drafting of the bill which related to veterans. Being a veteran myself, and many others in this body, we were quite concerned about that mistake. And the purpose of my taking the floor now is to advise the Senate this matter will be corrected in the TEA–21 Restoration Act, which is a euphemism for

the Technical Corrections Act, when we get to it. We will renew or efforts on Thursday.

I think it is important to put in tonight's RECORD a little of the background how this mistake was made.

The TEA–21 Restoration Act, which is, as I said, the Technical Corrections Act, corrects drafting errors to section 8201, also known as the Veterans Benefits Act of 1998.

Specifically, the corrections to this subtitle of the conference report relate to using funds estimated for the veterans smoking-related disability benefits as a budget offset for transportation spending.

The use of funds identified to finance the veterans tobacco-related smoking disability benefits for other domestic discretionary programs was first proposed in President Clinton's fiscal year 1999 budget request.

The Senate budget resolution also identified these funds as potential offsets for transportation spending.

During the conference on the Transportation Equity Act for the 21st Century (TEA–21), the Senate and House leadership and the Clinton administration agreed to use the funds estimated for the veterans smoking-related disability benefit as an offset so that transportation spending would equal gas tax revenues collected for the highway trust fund.

The provision included in the conference report on TEA–21 to use the veterans smoking-related disability benefits for transportation was drafted incorrectly and had the unintended consequence of identifying smoking as an act of ''willful misconduct'' by veterans.

That was a tragic error, drafting error, that took place in the legislative counsel's office. It was unintended.

I have gone back and read the code, found the section from which this concept was withdrawn, and it was just one of those mistakes. There was a great deal of rushed effort toward the end of this bill and those types of mistakes happen. What is most regrettable, it has caused a great deal of emotional stress among veterans. For that, I and many others apologize.

Today, at our midday caucus, Senator MCCAIN raised this matter and spoke most passionately on it, about his concern to have it corrected. That is one of the reasons I have come to the floor tonight, to assure Senators if and when we get to this technical correction bill it will be corrected.

The provision in the TEA–21 Restoration Act corrects any reference to smoking as an act of ''willful misconduct'' by veterans.

This provision also clarifies that veterans who have filed claims for smoking-related benefits are grandfathered.

The provision also makes clear that those active-duty service personnel who have a smoking-related illness will continue to qualify for disability compensation.

Another correction in this bill relates to ensuring that survivors and their dependents will receive the increased benefits of the Montgomery G.I. Bill provided in the conference report.

The offsets clarified in the TEA–21 Restoration Act remain those that were identified in the President's budget request and the Senate budget resolution.

Mr. President, I ask unanimous consent to have printed in the RECORD following my remarks a letter from the Executive Office of the President dated May 29, 1998. This is a transmission from the President through the Office of Management and Budget to advise the Senate on how best to make this correction.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1)

Mr. WARNER. I also ask unanimous consent immediately following that to have printed in the RECORD a copy of the bill to be known as the Technical Corrections Act, or Restoration Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 2)

Mr. WARNER. This afternoon, Chairman CHAFEE and the ranking member, Mr. BAUCUS, and myself had a meeting of the Committee on Environment and Public Works. It was well attended by Members. We explained this situation and how there were three committees working on this important piece of legislation. Of course, the committee of original jurisdiction, the Environment and Public Works, another committee of original jurisdiction, the Banking Committee, which dealt with the mass transit part of the bill, and also throughout Chairman DOMENICI and the distinguished ranking member, the Senator from New Jersey, Senator LAUTENBERG, worked with us from the standpoint of the Budget Committee, which had an important role, of course, in the offset issue.

So many people were involved—three staffs, three committees. We regret sincerely that this error took place. We hope we have taken the appropriate corrective measures.

This language has been submitted to the veterans committee for review. I understand the Senator from West Virginia, Mr. ROCKEFELLER, will have some views to express on this matter, and also the Budget Committee. There is a report to the Senate and to those who are following this issue in hopes that we can put to rest a very serious problem which was accidental, I am convinced of it. We regret most sincerely, speaking to myself and I think many other veterans, that this caused such consternation among the veterans of the United States.

EXHIBIT 1

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, May 29, 1998.

NOTE FOR BILL HOAGLAND

From: Jack Lew

Subject: Technical Corrections to the TEA Bill

Attached per our conversation is the Administration's original legislative proposal for the Veterans tobacco offset, which would correct all of the problems created by the language included in the enrolled TEA bill. We have drafted this as an amendment to TEA that would delete the incorrect language and insert the original Administration proposal.

We are continuing to discuss administrative remedies with the Department of Veterans Affairs, but those discussions have not yet reached a final conclusion.

Please call me if you have any questions. (I will be out on Monday, and Josh Gotbaum or Dan Mendelson will be able to help you.)

EXHIBIT 2

SEC. 14. CORRECTIONS TO VETERANS SUBTITLE.

(a) TOBACCO-RELATED ILLNESSES IN VETERANS.—Section 8202 of the Transportation Equity Act for the 21st Century is amended to read as follows (and the amendments made by that section as originally enacted shall be treated for all purposes as not having been made):

''SEC. 8202. TREATMENT OF TOBACCO-RELATED ILLNESSES OF VETERANS.

''(a) IN GENERAL.—(1) Chapter 11 of title 38, United States Code, is amended by inserting after section 1102 the following new section:

'§ 1103. Special provisions relating to claims based upon effects of tobacco products

'(a) Notwithstanding any other provision of law, a veteran's disability or death shall not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service for purposes of this title on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service.

'(b) Nothing in subsection (a) shall be construed as precluding the establishment of service connection for disability or death from a disease or injury which is otherwise shown to have been incurred or aggravated in active military, naval, or air service or which became manifest to the requisite degree of disability during any applicable presumptive period specified in section 1112 or 1116 of this title.'.

''(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1102 the following new item:

'1103. Special provisions relating to claims based upon effects of tobacco products.'.

''(b) EFFECTIVE DATE.—Section 1103 of title 38, United States Code, as added by subsection (a), shall apply with respect to claims received by the Secretary of Veterans Affairs after the date of the enactment of this Act.''.

(b) GI BILL EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS OF VETERANS.—Subtitle B of title VIII of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new section:

''SEC. 8210. TWENTY PERCENT INCREASE IN RATES OF SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.

''(a) SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.—Section 3532 of title 38, United States Code, is amended—

''(1) in subsection (a)(1)—

''(A) by striking out '$404' and inserting in lieu thereof '$485';

''(B) by striking out '$304' and inserting in lieu thereof '$365'; and

''(C) by striking out '$202' and inserting in lieu thereof '$242';

''(2) in subsection (a)(2), by striking out '$404' and inserting in lieu thereof '$485';

''(3) in subsection (b), by striking out '$404' and inserting in lieu thereof '$485'; and

''(4) in subsection (c)(2)—

''(A) by striking out '$327' and inserting in lieu thereof '$392';

''(B) by striking out '$245' and inserting in lieu thereof '$294'; and

''(C) by striking out '$163' and inserting in lieu thereof '$196'.

''(b) CORRESPONDENCE COURSE.—Section 3534(b) of such title is amended by striking out '$404' and inserting in lieu thereof '$485'.

''(c) SPECIAL RESTORATIVE TRAINING.—Section 3542(a) of such title is amended—

''(1) by striking out '$404' and inserting in lieu thereof '$485';

''(2) by striking out '$127' each place it appears and inserting in lieu thereof '$152'; and

''(3) by striking out '$13.46' and inserting in lieu thereof '$16.16'.

''(d) APPRENTICESHIP TRAINING.—Section 3687(b)(2) of such title is amended—

''(1) by striking out '$294' and inserting in lieu thereof '$353';

''(2) by striking out '$220' and inserting in lieu thereof '$264';

''(3) by striking out '$146' and inserting in lieu thereof '$175'; and

''(4) by striking out '$73' and inserting in lieu thereof '$88'.

''(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1998, and shall apply with respect to educational assistance allowances paid for months after September 1998.''.

Mr. WARNER. I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. McCAIN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONFIRMATION OF ROSEMARY S. POOLER TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Mr. LEAHY. Mr. President, I congratulate Judge Rosemary Pooler on her confirmation as a member of the Second Circuit. She has been providing a great service as a United States District Court Judge in the Northern District of New York. President Clinton nominated her last November to fill a vacancy on the Second Circuit. I worked very hard to have her included in a prompt confirmation hearing, was finally able to get her included in a hearing on May 14 and, with the cooperation of Chairman HATCH, have her reported by the Judiciary Committee on May 21. With her confirmation, Judge Pooler becomes the second woman to serve as a member of the United States Court of Appeals for the Second Circuit.

Ironically, her confirmation also brings into sharp relief the harm that is being perpetuated in the Northern District of New York by the Senate's refusal to consider Clarence Sundrum, another nominee for a longstanding vacancy on an overburdened court. Mr. Sundrum was first nominated in September 1995, over two and one-half years ago. The vacancy has long been considered a judicial emergency. This judicial nomination is the oldest pending judicial nomination before the Senate. After two hearings and almost three years, Mr. Sundrum has still not been considered by the Judiciary Committee or the Senate.

I was very disappointed that Judge Pooler was not confirmed before the Senate left for its Memorial Day recess. Along with the confirmations of Judge Sonia Sotomayor, Robert Sack and Chester Straub, her confirmation will help end the continuing emergency caused by the vacancy crisis on the Second Circuit. I want to thank the Majority Leader for calling up the nomination of Judge Rosemary Pooler today and Chester Straub yesterday.

As I noted most recently on May 21 and May 22, the Second Circuit is suffering from an unprecedented emergency caused by the vacancies crisis on that court. We have had four nominees before the Senate for many months who together could help end this crisis.

On March 25, the five continuing vacancies on the 13-member court caused Chief Judge Ralph Winter to certify a circuit emergency, to begin canceling hearings and to take the unprecedented step of having 3-judge panels convened that include only one Second Circuit judge. On April 23, Chief Judge Winter was forced to issue additional emergency orders.

The people of the Second Circuit need additional federal judges confirmed by the Senate. Indeed, the Judicial Conference of the United States recommends that in addition to the current vacancies, the Second Circuit be allocated an additional two judgeships to handle its workload. The Second Circuit is suffering harm from the vacancy crisis and Senate inaction.

This past weekend the Second Circuit held its annual circuit conference. I was pleased that this year's meetings could be held in Manchester, Vermont, and congratulate Chief Judge Murtha of the District Court of Vermont on the success of those meetings.

In connection with the annual conference, the Chief Judge of the Second Circuit issued his annual report. Chief Judge Winter concentrates on ''the problem, now chronic as well as aggravated, of obtaining resources equal to the jurisdictional responsibilities entrusted to the Court.'' In particular, he notes that the filings with the Court of Appeals rose 20 percent over the last two years while its active judges went down by 33 percent, from 12 to eight.

After thanking the senior judges, district judges and visiting judges from other circuits, without whom the Second Circuit ''would have been engulfed by a backlog that would not be amenable to future reduction,'' he went on to note:

> The semblance of normalcy, however, is still just a semblance. Ten panel days in April and June had to be canceled outright. Seven panels were able to hear cases only after I certified that a judicial emergency existed so that the panel could proceed with only one member of the court and two visiting judges. The number of pending cases is increasing at an alarming rate, and the Court has the largest backlog in its history.

The Chief Judge had some blunt talk for congressional critics.

He concludes:

> The political branches have steadily increased our federal question jurisdiction, have maintained an unnecessarily broad definition of diversity jurisdiction, and then have denied us resources minimally proportionate to that jurisdiction. That is the problem. The result is that a court with proud traditions of craft in decision-making and currency in its docket is now in danger of losing both.

I conclude by noting my regret that the Senate is not proceeding to consider the longstanding nomination of Judge Sonia Sotomayor. I will continue to press for her confirmation and that of Robert Sack to the Second Circuit. I have been urging favorable Senate action on the nomination of Judge Sonia Sotomayor to the Second Circuit for many months.

Judge Sonia Sotomayor is a qualified nominee who was confirmed to the United States District Court for the Southern District of New York in 1992 after being nominated by President Bush. She attended Princeton University and Yale Law School. She worked for over four years in the New York District Attorney's Office as an Assistant District Attorney and was in private practice with Pavia & Harcourt in New York. She is strongly support by Senator MOYNIHAN and Senator D'AMATO. She is a source of pride to Puerto Rican and other Hispanic supporters and to women. When confirmed she will be only the second judge of Puerto Rican descent to serve on the Second Circuit.

By a vote of 16 to 2, the Judiciary Committee reported the nomination of Judge Sonia Sotomayor to the Senate. That was on March 5, 1998, almost three months ago. No action has been taken or scheduled on that nomination and no explanation for the delay has been forthcoming. This is the oldest judicial nomination pending on the Senate Executive Calendar. In spite of a bipartisan April 9 letter to the Senate Republican Leader signed by all six Senators from the three States forming the Second Circuit urging prompt action, this nomination continues to be stalled by anonymous objections. Our bipartisan letter to the Majority Leader asked that he call up for prompt consideration by the Senate the nomination of Judge Sonia Sotomayor. That was almost three months ago.

I do not know why this distinguished jurist, who was nominated by President Bush to the District Court and by President Clinton to the Court of Appeals, is being denied consideration by