surface transportation reauthorization bill.

Mr. INOUYE. Mr. President, I rise to expound upon a provision in the Transportation appropriations bill to forgive the State of Hawaii from its obligation to repay $30 million owed to the Airport Revenue Fund for ceded land payments to the Office of Hawaiian Affairs [OHA].

Current law states that airport revenues can only be used for airport purposes. The U.S. Department of Transportation's inspector general found in September of 1996, that the approximately $30 million in ceded land payments made from the Hawaii Airport Revenue Fund were not in compliance with the law. In April of this year, the U.S. Department of Transportation affirmed the decision, and is seeking the repayment of those moneys.

A continuation of the status quo—continued ceded land payments from the Airport Revenue Fund—was not possible. It was counter to the U.S. Department of Transportation's position and policy. I did not have the support of my colleagues to legislate its continuation. At this time, forgiveness of the $30 million debt was possible and achievable. I thank my colleagues for allowing for the congressional forgiveness of an airport revenue diversion in order to aid the State of Hawaii and the Office of Hawaiian Affairs.

However, I would like to make clear that as a result of the U.S. Department of Transportation ruling and the pending legislation, the removal of the Airport Revenue Fund for use by the State of Hawaii as a source of compensating the Office of Hawaiian Affairs for use of ceded lands upon which the airports sit, should not equate to a like reduction in the State's obligation to OHA under State law. This forgiveness provision should not be construed as a forgiveness of the State's obligation to OHA.

The airports continue to sit on ceded lands. The State's obligation to compensate OHA for the use of the land upon which the airports sit should also continue. The only difference would now be the source the State will draw upon to satisfy its obligation. I have viewed my role as aiding in alleviating the accumulated debt to reduce the pressure, and thereby allow the State and OHA to return to the negotiating table to work toward a mutually acceptable course of action that accepts as a premise, the existence of an obligation.

To ensure that my intent is clear in this regard, I have requested the inclusion of the following provision in section 335:

Nothing in this Act shall be construed to affect any existing statutes of the several states that define the obligations of such states to Native Hawaiians, Native Americans or Alaskan Natives in connection with ceded lands, except to make clear that airport revenues may not be used to satisfy any such obligations.

Mr. President, in light of the unique history of Hawaii's ceded lands and the obligations that flow from these lands for the betterment of the native Hawaiian people, I believe that this is more than a fiscal matter, this is a fiduciary matter—one of trust and obligation. Section 335 ensures that the State of Hawaii and OHA would not be required to return funds already in their possession. It is my expectation that this will calm the waters and clear the way for reasoned negotiations as the State, in good faith, looks to satisfy its obligations from other sources.

Mr. SHELBY. Mr. President, I know of no further amendments to S. 1048 at this time.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The clerk will report the House companion bill.

The legislative clerk read as follows:

A 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.

The PRESIDING OFFICER. All after the enacting clause is stricken and the text of S. 1048, as amended, is inserted.

Under the previous order, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill was read the third time.

Mr. SHELBY. I ask unanimous consent that the vote occur on passage of H.R. 2169 immediately following the vote with respect to S. 39, the tuna-dolphin bill, which will occur tomorrow morning.

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

Without objection, rule XII is waived as well.

MEASURE READ FOR FIRST TIME—S. 1085

Mr. LAUTENBERG. Mr. President, it is my understanding that S. 1085, introduced earlier by Senator WELLSTONE, is at the desk. I ask for its first reading under rule XIV.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1085) to improve the management of the Boundary Waters Canoe Area Wilderness, and for other purposes.

Mr. LAUTENBERG. Mr. President, I now ask for a second reading and object to my own request on behalf of the other side of the aisle.

The PRESIDING OFFICER. Objection is heard.

MORNING BUSINESS

Mr. SHELBY. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

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

PREGNANCY-BASED SEX DISCRIMINATION IN MEXICO'S MAQUILADORA INDUSTRY

Mr. LEAHY. Mr. President, I want to bring to the attention of the Senate that Human Rights Watch, the International Labor Rights Fund, and Mexico's National Association of Democratic Lawyers have asked the U.S. National Administrative Office [U.S. NAO] to investigate reports of widespread pregnancy-based sex discrimination in Mexico's maquiladora industry.

These organizations report that maquiladoras routinely administer pregnancy exams to prospective female employees in order to deny them work, in blatant violation of their privacy. Female employees face invasive questions about contraceptive use, sexual activity, and menses schedules. In some cases, women who become pregnant after being hired are forced to resign. Maquiladora owners fear that pregnant women will reduce production standards and that legally mandated maternity benefits will drain industry money. The report concludes that the Mexican Government has failed to investigate these discriminatory practices in violation of their own laws and NAFTA.

The request for an investigation is the first of its kind that has been brought before the U.S. NAO. The case represents an important opportunity to convey to our trading partners and United States corporations who have operations in Mexico that sex discrimination is intolerable, illegal, and in violation of NAFTA.

As we consider expanding NAFTA benefits to the Caribbean Basin and other South American countries, the United States should demonstrate to our trading partners that we take labor rights violations seriously. I hope the U.S. NAO will consider this case expeditiously and I look forward to its report. The priviledge of free trade and its economic benefits should be conditional upon the trading partners abiding by the same labor and environmental laws.

THE SHAW'S SUPERMARKET LABOR CONTROVERSY

Mr. KENNEDY. Mr. President, for the past 2 days, 6,500 workers have been on strike at the Shaw's Supermarket chain in southeastern Massachusetts and Rhode Island. These workers are members of the United Food and Commercial Workers Union. For months, they negotiated in good faith with their employer in an effort to reach a collective bargaining agreement fair to both sides.

But no agreement could be reached. The company insisted on cutting

health care benefits and requiring the employees to pay part of the premium. The company also proposed to reduce sick leave and cut back on job security protections. In addition, the company would not even consider the wage increase that the workers are seeking.

The company left workers no choice but to go on strike when their current contract expired—and at midnight last Sunday they did so.

Many of the affected employees earn less than $6 an hour. All of them count on health benefits for themselves and their families. These employees include Marilyn and Donnie Henderson, a husband and wife from Methuen, MA. They began working at Shaw's over 15 years ago, when the company was a family-owned business. Now it is owned by a corporation based in Britain. Donnie Henderson suffers from emphysema. He needs the health insurance. So do the couple's children, one of whom is disabled.

The Hendersons and thousands like them are hardworking, dedicated employees of Shaw's. They went on strike only as a last resort, because they can't afford to take the cuts the company demanded.

Today, it appears that the company and union have reached a tentative settlement of their dispute. Union members will vote tomorrow on whether to ratify the agreement. Employees could be back on the job by this weekend.

All of us agree that labor disputes are best resolved when the parties themselves can reach agreement. I am hopeful that this is what has happened between Shaw's and its employees.

But, if the matter is not resolved, and workers are forced to continue to walk picket lines, I am concerned that the company might again turn to the use of replacement workers. Shaw's used replacements from the beginning of this strike, and I regret that. This tactic is hostile to loyal workers like the Hendersons, and hostile to the collective bargaining process. In strikes where permanent replacements are used, workers lost the most, but studies show that everyone else loses as well. Employers suffer, too, because strikes are prolonged.

According to a study of the period from 1935 to 1973, the average duration of a strike was seven times longer in cases where permanent replacements were used.

Another study found that, where employers neither announced an intention to hire permanent replacements nor actually hired them, the average length of strikes was 27 days, but it soared to 84 days when permanent replacements were hired.

The ability to hire permanent replacements tilts the balance unfairly in favor of businesses in labor-management relations. Hiring permanent replacements encourages management intransigence in negotiating with labor. That practice encourages employers to replace current workers with new workers willing to settle for less—to accept smaller paychecks and other benefits.

This tradeoff is unacceptable for the 6,500 striking workers at Shaw's Supermarkets, and it is unacceptable for working men and women across the country. Therefore, if the tentative settlement between Shaw's and its employees breaks down, and Shaw's tries to hire replacement workers again, I intend to offer legislation to prohibit this practice. The Workplace Fairness Act will ensure that the right to join a union and bargain over wages and employment conditions remains a meaningful right, instead of a hollow promise. The bill reaffirms our commitment to the collective bargaining process, and to a fair balance between labor and management.

I am hopeful that employees and Shaw's management will resolve all their differences this week. But if they do not, and replacement workers appear at the supermarkets again, I intend to offer a bill to outlaw that tactic, and will urge my colleagues to approve it.

WILLIAM J. BRENNAN, JR., GUARDIAN OF THE CONSTITUTION

Mr. MOYNIHAN. Mr. President, current Supreme Court Justice David Souter captured the legacy of jurisprudence left behind by William J. Brennan Jr., when he said: ''Justice Brennan is going to be remembered as one of the most fearlessly principled guardians of the American Constitution that it has ever had and ever will have.''

In an era when no institution is more embattled than the U.S. Constitution, we must make special note of the passing of such ardent guardians. In a manner that endeared him equally to friend and foe, Justice Brennan matched the importance of his decisions with literary acumen. With language that could be compared to the authors of the Constitution, Justice Brennan guarded the constitutional principles—most especially the freedom to criticize one's government.

Madison's original version of the first amendment submitted on June 8, 1789, provided that: ''The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.'' Justice Brennan's identification of Madison's inviolable protection was crucial during the civil rights movement when members of the press were being figuratively gagged for their criticism of public officials. Thus, Brennan wrote in The New York Times versus Sullivan:

> We consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. * * *
>
> A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable ''self censorship.'' Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. * * *
>
> Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which ''steer far wider of the unlawful zone.'' The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the 1st and 14th Amendments.

In 1789, James Madison warned that, ''If we advert to the nature of republican government, we shall find that the censorial power is in the people over the government, and not in the government over the people.'' Exactly 200 years later, Brennan expanded this underlying premise of constitutionally protected forms of free expression in the case, Texas versus Johnson, 1989:

> If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. * * *
>
> There is, moreover, no indication—either in the text of the Constitution or in our cases interpreting it—that a separate juridical category exists for the American flag alone. Indeed, we would not be surprised to learn that the persons who framed our Constitution and wrote the amendment that we now construe were not known for their reverence for the Union Jack.
>
> The first amendment does not guarantee that other concepts virtually sacred to our Nation as a whole—such as the principle that discrimination on the basis of race is odious and destructive—will go unquestioned in the marketplace of ideas.
>
> We decline, therefore, to create for the flag an exception to the joust of principles protected by the First Amendment. * * *
>
> The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong * * * We can imagine no more appropriate response to burning a flag than waving one's own. * * *

Justice Brennan came to embody the defense of a Madisonian concept of the first amendment. We shall not soon forget his legacy, nor the critical mantle he has left behind.

I ask unanimous consent that an Editoral from the New York Times of July 25, and an article by Anthony Lewis of July 28, be printed in the RECORD.

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

JUSTICE BRENNAN'S VISION

William J. Brennan Jr., who died yesterday at the age of 91, brought to his long and productive career on the United States Supreme Court a tenacious commitment to advancing individual rights and the Constitution's promise of fairness and equality. He served for 34 years, a tenure that spanned eight Presidents.

Named to the Court in 1956 by Dwight Eisenhower, Justice Brennan saw the law not as an abstraction but as an immensely powerful weapon to improve society and enlarge justice. As such, he was a crucial voice on