in today was not always the case. So strong was the belief in private property ownership that our Nation's Founding Fathers guaranteed it in the Constitution's Bill of Rights. The fifth amendment to the Constitution states: ''No person shall be * * * deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.''

For centuries, this constitutional directive was so respected that the needs of public concerns were adequately addressed without sacrificing private property rights. However, in the 1960's, 1970's, and 1980's our Nation's local, State, and Federal governments began to pass increasingly burdensome regulations governing air, water, land, and other natural resources, most of which had strong policy justification. The net, cumulative result, however, was a serious diminution of private property rights.

Unfortunately, fighting the Government over a taking in court is not only extremely expensive, it is time consuming and usually futile against the deep pockets of the Government, which has nothing to lose by drawing the battle out for years and years and wearing down opponents.

More than 80 percent of the time when property owners try to access Federal courts, they are thrown out on procedural grounds, before the merits are even considered. Of the 20 percent who are successful in having their cases heard in Federal court, it takes an average of nearly 10 years of litigation and negotiation to get through the process.

Governmental bodies at the State and local level often have legitimate reasons for restricting the use of private property for local zoning, environmental protection, and other purposes. Most State and local governments use their power responsibly, respecting the rights of private property owners when making land use decisions. Nevertheless, when a governmental body at any level infringes on an individual's constitutionally guaranteed rights, that person should at least have his day in court.

H.R. 1534 allows property owners whose rights have been violated the same access to Federal courts that other claimants have. For example, Federal environmental laws are readily enforced in Federal courts. First amendment claims against local governments also have no trouble getting heard in Federal court. Only private property rights are routinely dismissed or delayed. When landowners cannot afford to go to court to protect their legal and civil rights, the Government can use pressure to effectively take the land from the landowner.

As chairman of the Senate Interior Appropriations Subcommittee, I cannot help but be reminded of one of the most contentious issues that faced our subcommittee this year—the Headwaters Forest land acquisition. For years, the Government tried to use a variety of forestry and other environmental laws, including the Endangered Species Act, to force the landowner off a portion of its land.

The landowner filed a takings suit and now the Government has finally come to the bargaining table offering to pay for the property. As a result at the request of the Clinton administration, our Interior appropriations bill appropriates $250 million for the Headwaters acquisition. I cannot help but think that this landowner would never have received compensation if it had not had the substantial financial resources necessary to fight a long and contentious legal battle.

H.R. 1534 takes several steps to allow smaller, less wealthy landowners the same access to the Federal courts. Unlike other bills dealing with property rights, H.R. 1534 does not affect any environmental law, impact the budget, or define for the courts when a taking has occurred. Instead, the bill simply attempts to clear the many procedural hurdles that currently prevent most property owners from having their case heard in court in a fair and expeditious manner.

H.R. 1534 gives a property owner access to Federal court without having to spend years in an endless cycle of administrative appeals with Government agencies. The bill still requires the owner to attempt at least two appeals before going to court—but provides a clear end to the process. H.R. 1534 simply gives property owners the same access to Federal court that other claimants have.

Opponents of this legislation argue that this bill undermines the authority of State and local governments in zoning disputes. If this were the case, I would not be supporting H.R. 1534. I strongly believe that land use decisions should be made at the local level to the greatest extent possible. I believe in most cases it is in the best interests of landowners to have their cases decided at the local level. Rather than giving property owners another avenue or authority to sue cities and localities in Federal court, the House passed bill simply allows the decision to be made on the facts of the case without spending 10 years litigating on procedural questions.

Under H.R. 1534, local officials will still be in control of local zoning decisions. The Federal courts have consistently upheld local authority to make these decisions. The only role the Federal courts are given under this bill is the one they already have: to interpret the Constitution and determine whether individuals rights have been violated.

Passage of H.R. 1534 will be a small but significant step in the battle to restore private property rights. The issues of compensation and adequate notification of landowners when takings occur also need to be addressed by this body. Nevertheless, passage of H.R. 1534 is a positive step. As a cosponsor of companion legislation S. 1204 introduced by Senator COVERDELL, I urge my colleagues in the Senate to pass this legislation soon and hope the President will sign this moderate bill when it comes to his desk.●

FDA MODERNIZATION AND ACCOUNTABILITY ACT

● Mrs. MURRAY. Mr. President, there are very few pieces of legislation that we will act on that has the kind of impact that S. 830 will have on improving the quality of lives for millions of Americans. Ultimately, this legislation will impact every Member of this body. S. 830 represents a historic piece of legislation that will reform and modernize the Food and Drug Administration.

This legislation will result in the more rapid approval of new, lifesaving drugs and medical devices without jeopardizing a strong public health protection role for the FDA. Millions of people will have access to break through medical technology faster. More children will also benefit from the rapid improvement in drugs and devices to treat serious and life-threatening illness. And, finally the FDA will be given the resources it needs to meet the challenges and demands of protecting the public health and approving safe and effective drugs in a more timely manner.

When I made the decision to seek a seat on the Senate Labor and Human Resources Committee I did so because I wanted to be directly involved in the development of education and public health reform. I am proud to have worked with Chairman JEFFORDS in his effort to shepherd through the FDA reform legislation. I know that at times this was a difficult task and his leadership and patience were truly tested. I want to thank him for his willingness to forge a bipartisan bill that addressed many of the concerns that I had early in the process. I also want to thank Senator KENNEDY for his efforts on behalf of patients and consumers. Senator KENNEDY's hard work and commitment to a strong public health role for FDA resulted in some real improvements in this legislation.

The fact that we have before us today a bipartisan reform agreement is in itself a historic accomplishment. Prior to the 105th Congress I thought that I had a pretty good understanding of how the agency worked and where improvements needed to be made. What I discovered is that the drug and device approval process from lab to patient is a complex process involving numerous steps. The pressure on the FDA to improve safe and effective drugs and devices with minimal delay is overwhelming. In addition, the FDA must regulate billion dollar industries that have almost unlimited resources. What I have learned from this process is that the FDA is by far one of the most important public health agencies, but it is also one that we all seem to take for granted.

S. 830 is not just about the reform or modernization of a Federal agency. The activities of the FDA effect every single one of us, every single day. Whether it is taking an aspirin or brushing our teeth the FDA was involved. It ensured that the aspirin and the toothpaste was safe and effective. The FDA manufacturing standards protect these products so that we can feel confident that they were not contaminated or tampered with prior to our purchase.

The agency is also involved in making sure that new technology to diagnosis or screen for life-threatening illnesses is reliable and that the claims made by the manufacturer are consistent with the available technology. The FDA must also ensure the safety and effectiveness of all drugs as well. When we pick up a prescription like an antibiotic at the pharmacy, we never think twice about the safety or effectiveness of the drug. We simply assume that if taken properly it is safe and effective at treating an ear infection. It is because of the success of the FDA that we do take so much of this for granted.

This is not to say that there have not been problems in the past. But, I believe the changes and improvements made by S. 830 addresses some of these problems and that the commitment made by the chairman to maintain aggressive and effective oversight of the agency will prevent significant problems in the future. I know that there are some who are skeptical of the reforms and modernization called for in this legislation and they point to past problems at the agency as their proof. I am not dismissing past mistakes by the FDA, but I also do not believe we can allow the past errors to paralyze the agency. We have to move toward the future, and learn from the mistakes of the past.

The agency has been given a daunting task with limited resources. However, it has become obvious over the years that a major modernization was necessary in order to keep pace with the rapid changes in drugs and devices and the globalization of the biotech industry. In 1992 the Prescription Drug User Fee Act [PDUFA], the partnership between the agency and the prescription drug industry, was enacted. This major effort has proven to be a major success for the FDA, industry, and patients. I am pleased that we were able to include reauthorization of PDUFA in S. 830 that builds on the success of the 1992 legislation.

I am pleased that we have completed this process and are sending a solid, bipartisan bill to the President for signature. I am confident that enactment of S. 830, FDA Modernization and Accountability Act will prove to be one of the major accomplishments of the 105th Congress. I know that I am proud to have been directly involved in the development of this legislation.

I look forward to working with Chairman JEFFORDS and Senator KENNEDY in the same bipartisan manner as we tackle other public health reform initiatives.●

JONES ACT WAIVER—S. 1349

● Mr. MCCAIN. Mr. President, today the Committee on Commerce, Science, and Transportation agreed to be discharged from further consideration of S. 1349. The bill would waive the U.S. build and prior U.S. ownership requirements of the coastwise trade laws and allow the ferry *Prince Nova* to be employed in the coastwise trade.

Usually, Jones Act waiver bills such as S. 1349 are first considered by the Commerce Committee, and subsequently included in Coast Guard authorization legislation for final passage. In this case, the Commerce Committee did not have an opportunity to consider S. 1349 during the Committee's last executive session of this year. The Senator from Connecticut, however, requested the opportunity to have the Senate adopt the bill before the end of the first session.

Mr. President, the bill meets the Commerce Committee's usual criteria for adopting such waivers. Senator HOLLINGS, the ranking member of the Commerce Committee, and I agreed to request the Commerce Committee be discharged from further consideration of the bill so that the Senator from Connecticut's request could be accommodated.●

HAWAII'S EXCEPTIONALLY STRONG PATRIOTISM

● Mr. INOUYE. Mr. President, the Honolulu Star Bulletin's weekly article, ''Hawaii's World,'' written by one of Hawaii's most respected journalist, A. A. (Bud) Smyser, commemorated Veterans Day with an article entitled, ''Hawaii's Exceptionally Strong Patriotism.'' This article appeared in the Thursday, November 6, 1997 edition. I ask that Mr. Smyser's article be printed in the RECORD.

The article follows:

[From the Honolulu Star Bulletin, Nov. 6, 1997]

HAWAII'S EXCEPTIONALLY STRONG PATRIOTISM

(By A.A. Smyser)

For Veterans Day next Tuesday, I have a message from on high. The Defense Department's top officer in this half of the world calls Hawaii ''the most patriotic community I know.''

Adm. Joseph W. Prueher said that to a Chamber of Commerce of Hawaii lunch in July. He reiterated it recently when I asked for amplification.

He has been CINPAC (commander-in-chief Pacific) since January 1996, dealt with a lot of community matters, watched the turnouts of political and community leaders for Military Appreciation Week in May (which few if any other communities have), Memorial Day, Independence Day, Veterans Day and Pearl Harbor anniversary events.

He also is fully aware of the World War II contributions of Hawaii's soldiers of Japanese ancestry fighting to prove their loyalty. He is impressed by the still-continuing reunions of those groups with sons and daughters pledged to carry on.

He knows there are scratchy points in military-community relations such as the Makua Valley beach landing exercise, which he called off at the request of Governor Cayetano and leaders of the Leeward Oahu community.

But he has faith the community remains behind the essential use of Hawaii facilities to train fighting forces. He works closely with Sen. Daniel K. Inouye, who says ''this community pulls out the stops for the military more than any place I've ever seen.''

He's a Navy man, of course, who sees more of our mainland coasts than inland, but his Army deputy, Lt. Gen. Joseph DeFrancisco, concurs. The only place DeFrancisco can think of that comes close to matching us in showing its patriotism is the Gulf Coast area of Georgia around Fort Stewart and Hunter Army Airfield. Our Navy League chapter of 5,000 is the biggest in the U.S.

Servicemen in Hawaii get stickers for their ID cards that entitle them to kamaaina discounts in Waikiki an elsewhere. They also get auto license discounts and reduced tuition at the University of Hawaii.

There's a two-way street, of course. The armed services are among the very best Aloha United Way contributors. They provide emergency medical airlifts and rescues at sea, are prompt with community disaster relief. They have adopted 130 public and private schools for renovation help and grounds cleaning. They recently gave six schools 205 computers.

They host the Special Olympics for children with disabilities, serve as Big Brothers and Big Sisters, help tutor children in all grades, and dig in for projects like litter cleanup around Diamond Head. They co-host Hydrofest, join in community parades and open their bases for visitation. Veterans' medical facilities at Tripler Army Medical Center are first-rate.

Hawaii's high cost of living is a concern for many service people, alleviated by the fact that 78 percent are housed on base. Past criticisms of our schools seem to have eased with more military-community interaction.

Most land use concerns have been quieted by creation of a joint military-civilian task force to review military needs and relinquish unneeded properties.

Makua is the current hot potato. The canceled beach landing would have been a first, but continuing use of the valley itself as a weapons training area remains a high priority need to the military, an intrusion to the civilian critics.

It is the kind of thing the governor and other top civilian officials will have to weigh carefully in light of the $3.4 billion annual military spending here that is based heavily on our year-round training capability for all services.●

MAMMOGRAPHY QUALITY STANDARDS REAUTHORIZATION ACT

● Mr. JEFFORDS. Mr. President, I am very pleased that the Senate yesterday passed S. 537, the 5-year reauthorization of the Mammography Quality Standards Act. The original statute, now 5 years old, passed in 1992 with broad bipartisan support. Through the tireless efforts of Senator BARBARA MIKULSKI, the lead sponsor of the Mammography Quality Standards Reauthorization Act, we will be able to continue this critical program for women's health.

Prior to the passage of this legislation, breast tumors in women were often missed because of defective x ray equipment or inadequately trained personnel. Today, to operate lawfully, a mammography facility must be certified as providing quality mammography services. That means that a national uniform quality standard for