

117TH CONGRESS
1ST SESSION

S. 405

To provide compensation to certain residents of the island of Vieques, Puerto Rico, for the use of such island for military readiness, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2021

Mr. MENENDEZ (for himself and Mr. WICKER) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide compensation to certain residents of the island of Vieques, Puerto Rico, for the use of such island for military readiness, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Vieques Recovery and
5 Redevelopment Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Vieques is an island municipality of Puerto
9 Rico, measuring approximately 21 miles long by 4

1 miles wide, and located approximately 8 miles east
2 of the main island of Puerto Rico.

3 (2) Prior to Hurricane Maria, residents of
4 Vieques were served by an urgent medical care facil-
5 ity, the Susana Centeno Family Health Center, and
6 residents had to travel off-island to obtain medical
7 services, including most types of emergency care be-
8 cause the facility did not have the basic use of x-ray
9 machines, CT machines, EKG machines, ultra-
10 sounds, or PET scans.

11 (3) The predominant means of transporting
12 passengers and goods between Vieques and the main
13 island of Puerto Rico is by ferry boat service, and
14 over the years, the efficiency of this service has fre-
15 quently been disrupted, unreliable, and difficult for
16 cancer patients to endure to receive treatment. Each
17 trip to Ceiba, Puerto Rico, for the cancer patient is
18 an additional out-of-pocket expense ranging from
19 \$120 to \$200.

20 (4) The United States Military maintained a
21 presence on the eastern and western portions of
22 Vieques for close to 60 years, and used parts of the
23 island as a training range during those years, drop-
24 ping over 80 million tons of ordnance and other

1 weaponry available to the United States military
2 since World War II.

3 (5) The unintended, unknown, and unavoidable
4 consequences of these exercises were to expose
5 Americans living on the islands to the residue of
6 that weaponry which includes heavy metals and
7 many other chemicals now known to harm human
8 health.

9 (6) According to Government and independent
10 documentation, the island of Vieques has high levels
11 of heavy metals and has been exposed to chemical
12 weapons and toxic chemicals. Since the military ac-
13 tivity in Vieques, island residents have suffered from
14 the health impacts from long-term exposure to envi-
15 ronmental contamination as a result of 62 years of
16 military operations, and have experienced higher
17 rates of certain diseases among residents, including
18 cancer, cirrhosis, hypertension, diabetes, heavy metal
19 diseases, along with many unnamed and uncategor-
20 ized illnesses. These toxic residues have caused the
21 American residents of Vieques to develop illnesses
22 due to ongoing exposure.

23 (7) In 2017, Vieques was hit by Hurricane
24 Maria, an unusually destructive storm that dev-
25 astated Puerto Rico and intensified the existing hu-

1 manitarian crisis on the island by destroying existing
2 medical facilities.

3 (8) The medical systems in place prior to Hur-
4 ricane Maria were unable to properly handle the
5 health crisis that existed due to the toxic residue left
6 on the island by the military's activities.

7 (9) After Maria, the medical facility was closed
8 due to damage and continues to be unable to per-
9 form even the few basic services that it did provide.
10 Vieques needs a medical facility that can treat and
11 address the critical and urgent need to get life-sav-
12 ing medical services to its residents. Due to legal re-
13 strictions, the Federal Emergency Management
14 Agency (in this Act referred to as "FEMA") is un-
15 able to provide a hospital where its capabilities ex-
16 ceed the abilities of the facility that existed prior to
17 Maria; therefore Vieques needs assistance to build a
18 facility to manage the vast health needs of its resi-
19 dents.

20 (10) Every American has benefitted from the
21 sacrifices of those Americans who have lived and are
22 living on Vieques and it is our intent to acknowledge
23 that sacrifice and to treat those Americans with the
24 same respect and appreciation that other Americans
25 enjoy.

1 (11) In 2012, the residents of Vieques were de-
 2 nied the ability to address their needs in Court due
 3 to sovereign immunity, *Sánchez v. United States*,
 4 No. 3:09–cv–01260–DRD (D.P.R.). However, the
 5 United States Court of Appeals for the First Circuit
 6 referred the issue to Congress and urged it to ad-
 7 dress the humanitarian crisis. This bill attempts to
 8 satisfy that request such that Americans living on
 9 Vieques have a remedy for the suffering they have
 10 endured.

11 **SEC. 3. SETTLEMENT OF CLAIMS AGAINST THE UNITED**
 12 **STATES FOR CERTAIN RESIDENTS OF THE IS-**
 13 **LAND OF VIEQUES, PUERTO RICO.**

14 (a) IN GENERAL.—An individual claimant who has
 15 resided on the island of Vieques, Puerto Rico, for not less
 16 than 5 years and files a claim for compensation under this
 17 section with the Special Master, appointed pursuant to
 18 subsection (c), shall be awarded monetary compensation
 19 as described in subsection (b) if—

20 (1) the Special Master determines that the
 21 claimant is or was a resident, the child of a resident,
 22 or an immediate heir (as determined by the laws of
 23 Puerto Rico) of a deceased claimant on the island of
 24 Vieques, Puerto Rico, during or after the United

1 States Government used the island of Vieques, Puer-
2 to Rico, for military readiness;

3 (2) the claimant previously filed a lawsuit or an
4 administrative claim, or files a claim not later than
5 120 days after the date of the enactment of this Act
6 against the United States Government for personal
7 injury, including illness or death arising from use by
8 the United States Government of the island of
9 Vieques for military readiness; and

10 (3) the claimant submits to the Special Master
11 written medical documentation that indicates the
12 claimant contracted a chronic, life-threatening, or
13 physical disease or illness limited to cancer, hyper-
14 tension, cirrhosis, kidney disease, diabetes, or a
15 heavy metal poisoning during or after the United
16 States Government used the island of Vieques, Puer-
17 to Rico, for military readiness.

18 (b) AMOUNTS OF AWARD.—

19 (1) IN GENERAL.—A claimant who meets the
20 requirements of subsection (a) shall be awarded
21 compensation as follows:

22 (A) \$50,000 for 1 disease described in sub-
23 section (a)(3).

24 (B) \$80,000 for 2 diseases described in
25 subsection (a)(3).

1 (C) \$110,000 for 3 or more diseases de-
2 scribed in subsection (a)(3).

3 (2) INCREASE IN AWARD.—In the case that an
4 individual receiving an award under paragraph (1)
5 of this subsection contracts another disease under
6 subsection (a)(3) and files a new claim with the Spe-
7 cial Master for an additional award not later than
8 10 years after the date of the enactment of this Act,
9 the Special Master may award the individual an
10 amount that is equal to the difference between—

11 (A) the amount that the individual would
12 have been eligible to receive had the disease
13 been contracted before the individual filed an
14 initial claim under subsection (a); and

15 (B) the amount received by the individual
16 pursuant to paragraph (1).

17 (3) DECEASED CLAIMANTS.—In the case of an
18 individual who dies before making a claim under this
19 section or a claimant who dies before receiving an
20 award under this section, any immediate heir to the
21 individual or claimant, as determined by the laws of
22 Puerto Rico, shall be eligible for one of the following
23 awards:

24 (A) Compensation in accordance with
25 paragraph (1), divided among any such heir.

1 (B) Compensation based on the age of the
 2 deceased as follows:

3 (i) In the case of an individual or
 4 claimant who dies before attaining 20
 5 years of age, \$110,000, divided among any
 6 such heir.

7 (ii) In the case of an individual or
 8 claimant who dies before attaining 40
 9 years of age, \$80,000, divided among any
 10 such heir.

11 (iii) In the case of an individual or
 12 claimant who dies before attaining 60
 13 years of age, \$50,000, divided among any
 14 such heir.

15 (c) APPOINTMENT OF SPECIAL MASTER.—

16 (1) IN GENERAL.—The Attorney General shall
 17 appoint a Special Master not later than 90 days
 18 after the date of the enactment of this Act to con-
 19 sider claims by individuals and the municipality.

20 (2) QUALIFICATIONS.—The Attorney General
 21 shall consider the following in choosing the Special
 22 Master:

23 (A) The individual's experience in the proc-
 24 essing of victims' claims in relation to foreign
 25 or domestic governments.

1 (B) The individual's balance of experience
2 in representing the interests of the United
3 States and individual claimants.

4 (C) The individual's experience in matters
5 of national security.

6 (D) The individual's demonstrated abilities
7 in investigation and fact findings in complex
8 factual matters.

9 (E) Any experience the individual has had
10 advising the United States Government.

11 (d) AWARD AMOUNTS RELATED TO CLAIMS BY THE
12 MUNICIPALITY OF VIEQUES.—

13 (1) AWARD.—The Special Master, in exchange
14 for its administrative claims, shall provide the fol-
15 lowing as compensation to the Municipality of
16 Vieques:

17 (A) STAFF.—The Special Master shall pro-
18 vide medical staff, and other resources nec-
19 essary to build and operate a level three trauma
20 center (in this section, referred to as “medical
21 facility”) with a cancer center and renal dialysis
22 unit and its equipment. The medical facility
23 shall be able to treat life-threatening, chronic,
24 heavy metal, and physical and mental diseases.
25 The medical facility shall be able to provide

1 basic x-ray, EKG, internal medicine expertise,
2 medical coordination personnel and case man-
3 agers, ultrasound, and resources necessary to
4 screen claimants described in subsection (a)
5 who are receiving treatment for the diseases or
6 illnesses described in paragraph (3) of that sub-
7 section for cancer and the other prevailing
8 health problems.

9 (B) OPERATIONS.—The Special Master
10 shall fund the operations of the medical facility
11 to provide medical care for pediatric and adult
12 patients who reside on the island of Vieques, al-
13 lowing the patients to be referred for tertiary
14 and quaternary health care facilities when nec-
15 essary, and providing the transportation and
16 medical costs when traveling off the island of
17 Vieques.

18 (C) ADMINISTRATIVE EXPERTISE.—The
19 Special Master shall ensure that the Adminis-
20 trator of FEMA provides all administrative and
21 technical expertise and oversight in the bidding
22 and construction of the facility but the design
23 and abilities of the hospital shall be determined
24 by the Special Master considering the medical
25 and research needs of the residents of the is-

1 land of Vieques. All costs shall be part of the
2 municipality's compensation.

3 (D) INTERIM SERVICES.—Before the med-
4 ical facility on the island of Vieques is oper-
5 ational, the Special Master shall provide to
6 claimants described in subsection (a) who are
7 receiving treatment for the diseases or illnesses
8 described in paragraph (3) of that subsection—

9 (i) urgent health care air transport to
10 hospitals on the mainland of Puerto Rico
11 from the island of Vieques;

12 (ii) medical coordination personnel
13 and case managers;

14 (iii) telemedicine communication abili-
15 ties; and

16 (iv) any other services that are nec-
17 essary to alleviate the health crisis on the
18 island of Vieques.

19 (E) SCREENING.—The Special Master
20 shall make available, at no cost to the patient,
21 medical screening for cancer, cirrhosis, diabetes,
22 and heavy metal contamination on the island of
23 Vieques.

24 (F) ACADEMIC PARTNER.—The Special
25 Master shall appoint an academic partner, with

1 appropriate experience and an established rela-
2 tionship with the Municipality of Vieques, that
3 shall—

4 (i) lead a research and outreach en-
5 deavor on behalf of the Municipality of
6 Vieques;

7 (ii) select the appropriate scientific ex-
8 pertise and administer defined studies,
9 conducting testing and evaluation of the
10 soils, seas, plant and animal food sources,
11 and the health of residents; and

12 (iii) determine and implement the
13 most efficient and effective way to reduce
14 the environmental toxins to a level suffi-
15 cient to return the soils, seas, food sources,
16 and health circumstances to a level that re-
17 duces the diseases on the island of Vieques
18 to the average in the United States.

19 (G) DUTIES.—The Special Master shall
20 provide amounts necessary for the academic
21 partner and medical coordinator to carry out
22 the duties described in subparagraphs (A)
23 through (D).

1 (H) PROCUREMENT.—The Special Master
2 shall provide amounts necessary to compensate
3 the Municipality of Vieques for—

4 (i) contractual procurement obliga-
5 tions and additional expenses incurred by
6 the municipality as a result of the enact-
7 ment of this section and settlement of its
8 claim; and

9 (ii) any other damages and costs to be
10 incurred by the municipality, if the Special
11 Master determines that it is necessary to
12 carry out the purpose of this section.

13 (I) POWER SOURCE.—The Special Master
14 shall determine the best source of producing
15 independent power on the island of Vieques that
16 is hurricane resilient and can effectively sustain
17 the needs of the island and shall authorize such
18 construction as an award to the Municipality of
19 Vieques.

20 (2) SOURCE.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (B), amounts awarded under this
23 Act shall be made from amounts appropriated
24 under section 1304 of title 31, United States
25 Code, commonly known as the “Judgment

1 Fund”, as if claims were adjudicated by a
 2 United States District Court under section
 3 1346(b) of title 28, United States Code.

4 (B) LIMITATION.—Total amounts awarded
 5 under this Act shall not exceed \$1,000,000,000.

6 (3) DETERMINATION AND PAYMENT OF
 7 CLAIMS.—

8 (A) ESTABLISHMENT OF FILING PROCE-
 9 DURES.—The Attorney General shall establish
 10 procedures whereby individuals and the munici-
 11 pality may submit claims for payments under
 12 this section to the Special Master.

13 (B) DETERMINATION OF CLAIMS.—The
 14 Special Master shall, in accordance with this
 15 subsection, determine whether each claim meets
 16 the requirements of this section. Claims filed by
 17 residents of the island of Vieques that have
 18 been disposed of by a court under chapter 171
 19 of title 28, United States Code, shall be treated
 20 as if such claims are currently filed.

21 (e) ACTION ON CLAIMS.—The Special Master shall
 22 make a determination on any claim filed under the proce-
 23 dures established under this section not later than 150
 24 days after the date on which the claim is filed.

1 (f) PAYMENT IN FULL SETTLEMENT OF CLAIMS BY
2 INDIVIDUALS AND THE MUNICIPALITY OF VIEQUES
3 AGAINST THE UNITED STATES.—The acceptance by an
4 individual or the Municipality of Vieques of a payment of
5 an award under this section shall—

6 (1) be final and conclusive;

7 (2) be deemed to be in full satisfaction of all
8 claims under chapter 171 of title 28, United States
9 Code; and

10 (3) constitute a complete release by the indi-
11 vidual or municipality of such claim against the
12 United States and against any employee of the
13 United States acting in the scope of employment
14 who is involved in the matter giving rise to the
15 claim.

16 (g) CERTIFICATION OF TREATMENT OF PAYMENTS
17 UNDER OTHER LAWS.—Amounts paid to an individual
18 under this section—

19 (1) shall be treated for purposes of the laws of
20 the United States as damages for human suffering;
21 and

22 (2) may not be included as income or resources
23 for purposes of determining eligibility to receive ben-
24 efits described in section 3803(c)(2)(C) of title 31,
25 United States Code, or the amount of such benefits.

1 (h) LIMITATION ON CLAIMS.—A claim to which this
2 section applies shall be barred unless the claim is filed
3 within 15 years after the date of the enactment of this
4 Act.

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