

118TH CONGRESS
1ST SESSION

S. 1386

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

MAY 1, 2023

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,
10 ultrasounds, 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
20 uncategorized illnesses. These toxic residues have
21 caused the American residents of Vieques to develop
22 illnesses 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, *Sanchez 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 before the date of enactment of this Act and
17 files a claim for compensation under this section with the
18 Special Master, appointed pursuant to subsection (c), shall
19 be awarded monetary compensation as described in sub-
20 section (b) if—

21 (1) the Special Master determines that the
22 claimant is or was a resident or an immediate heir
23 (as determined by the laws of Puerto Rico) of a de-
24 ceased claimant on the island of Vieques, Puerto
25 Rico, during or after the United States Government

1 used the island of Vieques, Puerto Rico, for military
2 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 that it
12 is more likely than not the claimant contracted a
13 chronic, life-threatening, or physical disease or ill-
14 ness limited to cancer, hypertension, cirrhosis, kid-
15 ney disease, diabetes, or a heavy metal poisoning as
16 a result the United States Government used the is-
17 land of Vieques, Puerto 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 if the claimant shows that it is more
3 likely than not that the United States Military
4 activity caused the death of the individual as
5 follows:

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

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

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

18 (c) APPOINTMENT OF SPECIAL MASTER.—

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

23 (2) QUALIFICATIONS.—The Attorney General
24 shall consider the following in choosing the Special
25 Master:

1 (A) The individual's experience in the proc-
2 essing of victims' claims in relation to foreign
3 or domestic governments.

4 (B) The individual's balance of experience
5 in representing the interests of the United
6 States and individual claimants.

7 (C) The individual's experience in matters
8 of national security.

9 (D) The individual's demonstrated abilities
10 in investigation and fact findings in complex
11 factual matters.

12 (E) Any experience the individual has had
13 advising the United States Government.

14 (d) AWARD AMOUNTS RELATED TO CLAIMS BY THE
15 MUNICIPALITY OF VIEQUES.—

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

20 (A) STAFF.—The Special Master shall pro-
21 vide medical staff, and other resources nec-
22 essary to build and operate a level three trauma
23 center (in this section, referred to as “medical
24 facility”) with a cancer center and renal dialysis
25 unit and its equipment. The medical facility

1 shall be able to treat life-threatening, chronic,
2 heavy metal, and physical and mental diseases.
3 The medical facility shall be able to provide
4 basic x-ray, EKG, internal medicine expertise,
5 medical coordination personnel and case man-
6 agers, ultrasound, and resources necessary to
7 screen claimants described in subsection (a)
8 who are receiving treatment for the diseases or
9 illnesses described in paragraph (3) of that sub-
10 section for cancer and the other prevailing
11 health problems.

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

21 (C) INTERIM SERVICES.—Before the med-
22 ical facility on the island of Vieques is oper-
23 ational, the Special Master shall provide to
24 claimants described in subsection (a) who are

1 receiving treatment for the diseases or illnesses
2 described in paragraph (3) of that subsection—

3 (i) urgent health care air transport to
4 hospitals on the mainland of Puerto Rico
5 from the island of Vieques;

6 (ii) medical coordination personnel
7 and case managers;

8 (iii) telemedicine communication abili-
9 ties; and

10 (iv) any other services that are nec-
11 essary to alleviate the health crisis on the
12 island of Vieques.

13 (D) SCREENING.—The Special Master
14 shall make available, at no cost to the patient,
15 medical screening for cancer, cirrhosis, diabetes,
16 and heavy metal contamination on the island of
17 Vieques.

18 (E) ACADEMIC PARTNER.—The Special
19 Master shall appoint an academic partner, with
20 appropriate experience and an established rela-
21 tionship with the Municipality of Vieques, that
22 shall—

23 (i) lead a research and outreach en-
24 deavor on behalf of the Municipality of
25 Vieques;

1 (ii) select the appropriate scientific ex-
2 pertise and administer defined studies,
3 conducting testing and evaluation of the
4 soils, seas, plant and animal food sources,
5 and the health of residents; and

6 (iii) determine and implement the
7 most efficient and effective way to reduce
8 the environmental toxins to a level suffi-
9 cient to return the soils, seas, food sources,
10 and health circumstances to a level that re-
11 duces the diseases on the island of Vieques
12 to the average in the United States.

13 (F) DUTIES.—The Special Master shall
14 provide amounts necessary for the academic
15 partner and medical coordinator to carry out
16 the duties described in subparagraphs (A)
17 through (D).

18 (G) PROCUREMENT.—The Special Master
19 shall provide amounts necessary to compensate
20 the Municipality of Vieques for—

21 (i) contractual procurement obliga-
22 tions and additional expenses incurred by
23 the municipality as a result of the enact-
24 ment of this section and settlement of its
25 claim; and

1 (ii) any other damages and costs to be
2 incurred by the municipality, if the Special
3 Master determines that it is necessary to
4 carry out the purpose of this section.

5 (H) POWER SOURCE.—The Special Master
6 shall determine the best source of producing
7 independent power on the island of Vieques that
8 is hurricane resilient and can effectively sustain
9 the needs of the island and shall authorize such
10 construction as an award to the Municipality of
11 Vieques.

12 (2) SOURCE.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), amounts awarded under this
15 Act shall be made from amounts appropriated
16 under section 1304 of title 31, United States
17 Code, commonly known as the “Judgment
18 Fund”, as if claims were adjudicated by a
19 United States District Court under section
20 1346(b) of title 28, United States Code.

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

23 (3) DETERMINATION AND PAYMENT OF
24 CLAIMS.—

1 (A) ESTABLISHMENT OF FILING PROCE-
2 DURES.—The Attorney General shall establish
3 procedures whereby individuals and the municipi-
4 pality may submit claims for payments under
5 this section to the Special Master.

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

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

18 (f) PAYMENT IN FULL SETTLEMENT OF CLAIMS BY
19 INDIVIDUALS AND THE MUNICIPALITY OF VIEQUES
20 AGAINST THE UNITED STATES.—The acceptance by an
21 individual or the Municipality of Vieques of a payment of
22 an award under this section shall—

23 (1) be final and conclusive;

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

4 (3) constitute a complete release by the indi-
5 vidual or municipality of such claim against the
6 United States and against any employee of the
7 United States acting in the scope of employment
8 who is involved in the matter giving rise to the
9 claim.

10 (g) CERTIFICATION OF TREATMENT OF PAYMENTS
11 UNDER OTHER LAWS.—Amounts paid to an individual
12 under this section—

13 (1) shall be treated for purposes of the laws of
14 the United States as damages for human suffering;
15 and

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

20 (h) LIMITATION ON CLAIMS.—A claim to which this
21 section applies shall be barred unless the claim is filed
22 within 15 years after the date of the enactment of this
23 Act.

24 (i) ATTORNEY'S FEES.—Notwithstanding any con-
25 tract, a representative of an individual may not receive,

1 for services rendered in connection with a claim of the in-
2 dividual under this Act, more than 20 percent of a pay-
3 ment made under this Act.

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