

116TH CONGRESS
2D SESSION

S. 4398

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

AUGUST 3, 2020

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 of 2020”.

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 files
15 a claim for compensation under this section with the Spe-
16 cial Master, appointed pursuant to subsection (c), shall be
17 awarded monetary compensation as described in sub-
18 section (b) if—

19 (1) the Special Master determines that the
20 claimant is or was a resident, the child of a resident,
21 or an immediate heir (as determined by the laws of
22 Puerto Rico) of a deceased claimant on the island of
23 Vieques, Puerto Rico, during or after the United
24 States Government used the island of Vieques, Puer-
25 to Rico, for military readiness;

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

8 (3) the claimant submits to the Special Master
9 written medical documentation that indicates the
10 claimant contracted a chronic, life threatening, or
11 physical or mental disease or illness, including can-
12 cer, hypertension, cirrhosis, kidney disease, diabetes,
13 or a heavy metal poisoning during or after the
14 United States Government used the island of
15 Vieques, Puerto Rico, for military readiness.

16 (b) AMOUNTS OF AWARD.—

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

20 (A) \$10,000 for exposure in the case of a
21 claimant who provides proof—

22 (i) of a previously filed lawsuit or ad-
23 ministrative claim and not less than 5
24 years of residency on the island of Vieques,
25 Puerto Rico; or

1 (ii) that the claimant is the child of a
2 parent who resided in Vieques, Puerto
3 Rico, for not less than 5 years.

4 (B) \$50,000 for 1 disease described in sub-
5 section (a)(3).

6 (C) \$80,000 for 2 diseases described in
7 subsection (a)(3).

8 (D) \$110,000 for 3 or more diseases de-
9 scribed in subsection (a)(3).

10 (2) INCREASE IN AWARD.—In the case that an
11 individual receiving an award under paragraph (1)
12 of this subsection contracts another disease under
13 subsection (a)(3) and files a new claim with the Spe-
14 cial Master for an additional award not later than
15 10 years after the date of the enactment of this Act,
16 the Special Master may award the individual an
17 amount that is equal to the difference between—

18 (A) the amount that the individual would
19 have been eligible to receive had the disease
20 been contracted before the individual filed an
21 initial claim under subsection (a); and

22 (B) the amount received by the individual
23 pursuant to paragraph (1).

24 (3) DECEASED CLAIMANTS.—In the case of an
25 individual who dies before making a claim under this

1 section or a claimant who dies before receiving an
2 award under this section, any immediate heir to the
3 individual or claimant, as determined by the laws of
4 Puerto Rico, shall be eligible for one of the following
5 awards:

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

8 (B) Compensation based on the age of the
9 deceased as follows:

10 (i) In the case of an individual or
11 claimant who dies before attaining 20
12 years of age, \$110,000, divided among any
13 such heir.

14 (ii) In the case of an individual or
15 claimant who dies before attaining 40
16 years of age, \$80,000, divided among any
17 such heir.

18 (iii) In the case of an individual or
19 claimant who dies before attaining 60
20 years of age, \$50,000, divided among any
21 such heir.

22 (c) APPOINTMENT OF SPECIAL MASTER.—

23 (1) IN GENERAL.—The Attorney General shall
24 appoint a Special Master not later than 90 days

1 after the date of the enactment of this Act to con-
2 sider claims by individuals and the municipality.

3 (2) QUALIFICATIONS.—The Attorney General
4 shall consider the following in choosing the Special
5 Master:

6 (A) The individual’s experience in the proc-
7 essing of victims’ claims in relation to foreign
8 or domestic governments.

9 (B) The individual’s balance of experience
10 in representing the interests of the United
11 States and individual claimants.

12 (C) The individual’s experience in matters
13 of national security.

14 (D) The individual’s demonstrated abilities
15 in investigation and fact findings in complex
16 factual matters.

17 (E) Any experience the individual has had
18 advising the United States Government.

19 (d) AWARD AMOUNTS RELATED TO CLAIMS BY THE
20 MUNICIPALITY OF VIEQUES.—

21 (1) AWARD.—The Special Master, in exchange
22 for its administrative claims, shall provide the fol-
23 lowing as compensation to the Municipality of
24 Vieques:

1 (A) STAFF.—The Special Master shall pro-
2 vide medical staff, and other resources nec-
3 essary to build and operate a level three trauma
4 center (in this section, referred to as “medical
5 facility”) with a cancer center and renal dialysis
6 unit and its equipment. The medical facility
7 shall be able to treat life threatening, chronic,
8 heavy metal, and physical and mental diseases.
9 The medical facility shall be able to provide
10 basic x-ray, EKG, internal medicine expertise,
11 medical coordination personnel and case man-
12 agers, ultrasound, and resources necessary to
13 screen residents for cancer and the other pre-
14 vailing health problems.

15 (B) OPERATIONS.—The Special Master
16 shall fund the operations of the medical facility
17 to provide medical care for pediatric and adult
18 patients who reside on the island of Vieques, al-
19 lowing the patients to be referred for tertiary
20 and quaternary health care facilities when nec-
21 essary, and providing the transportation and
22 medical costs when traveling off the island of
23 Vieques, until such time as medical testing es-
24 tablishes that the disease levels are reduced to
25 the average in the United States.

1 (C) ADMINISTRATIVE EXPERTISE.—The
2 Special Master shall ensure that the Adminis-
3 trator of FEMA provides all administrative and
4 technical expertise and oversight in the bidding
5 and construction of the facility but the design
6 and abilities of the hospital shall be determined
7 by the Special Master considering the medical
8 and research needs of the residents of the is-
9 land of Vieques. All costs shall be part of the
10 municipality's compensation.

11 (D) INTERIM SERVICES.—Before the med-
12 ical facility on the island of Vieques is oper-
13 ational, the Special Master shall provide—

14 (i) urgent health care air transport to
15 hospitals on the mainland of Puerto Rico
16 from the island of Vieques;

17 (ii) medical coordination personnel
18 and case managers;

19 (iii) telemedicine communication abili-
20 ties; and

21 (iv) any other services that are nec-
22 essary to alleviate the health crisis on the
23 island of Vieques.

24 (E) SCREENING.—The Special Master
25 shall make available, at no cost to the patient,

1 medical screening for cancer, cirrhosis, diabetes,
2 and heavy metal contamination on the island of
3 Vieques.

4 (F) ACADEMIC PARTNER.—The Special
5 Master shall appoint an academic partner, with
6 appropriate experience and an established rela-
7 tionship with the Municipality of Vieques, that
8 shall—

9 (i) lead a research and outreach en-
10 deavor on behalf of the Municipality of
11 Vieques;

12 (ii) select the appropriate scientific ex-
13 pertise and administer defined studies,
14 conducting testing and evaluation of the
15 soils, seas, plant and animal food sources,
16 and the health of residents; and

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

24 (G) COMPENSATION.—The Special Master
25 shall compensate the Municipality of Vieques

1 for research conducted on behalf of the municipi-
2 pality, before the date of the enactment of this
3 Act, by universities, colleges, scientists, and
4 doctors who have tested and evaluated the prev-
5 alence of toxic substances in the soil, food
6 sources, and human populations.

7 (H) DUTIES.—The Special Master shall
8 provide amounts necessary for the academic
9 partner and medical coordinator to carry out
10 the duties described in subparagraphs (A)
11 through (D).

12 (I) PROCUREMENT.—The Special Master
13 shall provide amounts necessary to compensate
14 the Municipality of Vieques for—

15 (i) contractual procurement obliga-
16 tions and additional expenses incurred by
17 the municipality as a result of the enact-
18 ment of this section and settlement of its
19 claim; and

20 (ii) any other damages and costs to be
21 incurred by the municipality, if the Special
22 Master determines that it is necessary to
23 carry out the purpose of this section.

24 (J) CONSULTING FIRMS.—The Special
25 Master shall provide amounts necessary for the

1 Special Master to contract with consulting
2 firms for technical advice on any aspect of the
3 Special Master's duties.

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

11 (2) SOURCE.—Amounts awarded under this Act
12 shall be made from amounts appropriated under sec-
13 tion 1304 of title 31, United States Code, commonly
14 known as the “Judgment Fund”, as if claims were
15 adjudicated by a United States District Court under
16 section 1346(b) of title 28, United States Code.

17 (3) DETERMINATION AND PAYMENT OF
18 CLAIMS.—

19 (A) ESTABLISHMENT OF FILING PROCE-
20 DURES.—The Attorney General shall establish
21 procedures whereby individuals and the munici-
22 pality may submit claims for payments under
23 this section to the Special Master.

24 (B) DETERMINATION OF CLAIMS.—The
25 Special Master shall, in accordance with this

1 subsection, determine whether each claim meets
2 the requirements of this section. Claims filed by
3 residents of the island of Vieques that have
4 been disposed of by a court under chapter 171
5 of title 28, United States Code, shall be treated
6 as if such claims are currently filed.

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

11 (f) PAYMENT IN FULL SETTLEMENT OF CLAIMS BY
12 INDIVIDUALS AND THE MUNICIPALITY OF VIEQUES
13 AGAINST THE UNITED STATES.—The acceptance by an
14 individual or the Municipality of Vieques of a payment of
15 an award under this section shall—

16 (1) be final and conclusive;

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

20 (3) constitute a complete release by the indi-
21 vidual or municipality of such claim against the
22 United States and against any employee of the
23 United States acting in the scope of employment
24 who is involved in the matter giving rise to the
25 claim.

1 (g) CERTIFICATION OF TREATMENT OF PAYMENTS
2 UNDER OTHER LAWS.—Amounts paid to an individual
3 under this section—

4 (1) shall be treated for purposes of the laws of
5 the United States as damages for human suffering;
6 and

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

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