

112TH CONGRESS
1ST SESSION

H. R. 1645

To construct a specialty hospital and toxins research center on the island of Vieques, Puerto Rico, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2011

Mr. ROTHMAN of New Jersey (for himself, Mr. PIERLUISI, Mr. THOMPSON of Mississippi, and Mr. GUTIERREZ) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To construct a specialty hospital and toxins research center on the island of Vieques, Puerto Rico, 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 Development Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Vieques is an island municipality of Puerto
2 Rico, measuring approximately 21 miles long by 4
3 miles wide, and located approximately 8 miles east
4 of the main island of Puerto Rico.

5 (2) Vieques is home to nearly 10,000 United
6 States citizens, about 65 percent of whom live below
7 the Federal poverty line.

8 (3) The average monthly unemployment rate in
9 Vieques was 21.9 percent in 2009, 17.7 percent in
10 2010, and 15.7 percent in January 2011.

11 (4) Residents of Vieques are currently served by
12 a single primary and urgent care facility, the Susana
13 Centeno Family Health Center, and residents must
14 travel off-island to obtain many essential medical
15 services, including most types of emergency care.

16 (5) The predominant means of transporting
17 passengers and goods between Vieques and the main
18 island of Puerto Rico is by ferry boat service, and
19 over the years the efficacy of this service has fre-
20 quently been disrupted by launch delays and me-
21 chanical problems.

22 (6) The United States Navy maintained a pres-
23 ence on the eastern and western portions of the is-
24 land of Vieques, Puerto Rico, for nearly 60 years
25 and used parts of the island as a training range dur-

1 ing those years, dropping over 80 million pounds of
2 ordnance and employing virtually every type of am-
3 munition and ordnance available to the Navy since
4 World War II.

5 (7) Residents living on the areas expropriated
6 by the Federal Government for the Navy's use were
7 required to relocate to the central portion of the is-
8 land.

9 (8) According to records of the Federal Govern-
10 ment and testimony of Navy personnel, the island of
11 Vieques, Puerto Rico, has high levels of heavy met-
12 als and has been exposed to chemical weapons and
13 toxic chemicals, including napalm, agent orange, de-
14pleted uranium, white phosphorous, arsenic, mer-
15cury, lead, aluminum, cadmium, antimony, magne-
16sium, TNT, PCBs, RDX, barium, cyanide, solvents,
17and pesticides. All of these weapons and chemicals
18have been deployed on the island of Vieques, Puerto
19Rico, in the interest of training for the defense of
20our Nation.

21 (9) The Navy established the Vieques Naval
22 Training Range in eastern Vieques, which consisted
23 of two facilities: (1) the Atlantic Fleet Weapons
24 Training Facility, which was used for ship-to-shore
25 and aerial bombing exercises, and comprised a Live

1 Impact Area and a Secondary Impact Area; and (2)
2 the Eastern Maneuver Area, which was used pri-
3 marily for ground-based training involving smaller
4 munitions.

5 (10) The Navy also established the Naval Am-
6 munition Support Detachment in western Vieques to
7 store munitions used in its training in eastern
8 Vieques and to dispose of obsolete or damaged muni-
9 tions.

10 (11) In 2000, the Navy reported that it had
11 used 1,862 tons of ordnance annually in training ex-
12 ercises on Vieques from 1983 to 1998.

13 (12) In the National Defense Authorization Act
14 for Fiscal Year 2001, Congress directed the Navy to
15 close its facilities in western Vieques and to transfer
16 approximately 4,000 acres of that property to the
17 Municipality of Vieques, approximately 3,100 acres
18 to the Department of the Interior, and approxi-
19 mately 800 acres to the Puerto Rico Conservation
20 Trust.

21 (13) In the National Defense Authorization Act
22 for Fiscal Year 2002, Congress authorized the Navy
23 to close its training facilities on eastern Vieques if
24 equivalent training facilities were made available
25 elsewhere and directed the Navy, upon closure, to

1 transfer the nearly 15,000 acres of that property to
2 the Department of the Interior.

3 (14) In January 2003, the Navy certified to
4 Congress that alternative training sites had been
5 identified and confirmed that training operations
6 would cease on Vieques by May 2003.

7 (15) The Navy continues to be responsible for
8 administering and funding the cleanup of munitions
9 and contamination that resulted from its past activi-
10 ties on Vieques, subject to oversight by the Environ-
11 mental Protection Agency (EPA) and the Puerto
12 Rico Environmental Quality Board, an agency of the
13 government of Puerto Rico.

14 (16) Following the closure of the Navy's facili-
15 ties in 2003, public concerns were raised as to how
16 funding for the cleanup of Vieques would be
17 prioritized among the hundreds of other contami-
18 nated military installations in the United States for
19 which the Navy is responsible.

20 (17) Factors motivating these concerns included
21 the safety risks from explosives in munitions that
22 had accumulated over decades of live-fire training,
23 and the potential human health and ecological risks
24 from contaminants that may have leached from mu-

1 nitions and other hazardous wastes into the environ-
2 ment.

3 (18) In February 2005, EPA listed Vieques on
4 the National Priorities List (NPL) of the most haz-
5 ardous sites in the United States, elevating its pri-
6 ority for federally-funded cleanup.

7 (19) The NPL site listing includes the former
8 Vieques Naval Training Range in eastern Vieques
9 and the former Naval Ammunition Support Detach-
10 ment in western Vieques, as well as off-shore areas
11 where munitions may have entered the water during
12 past training exercises.

13 (20) As of August 2010, the Navy had recov-
14 ered and destroyed 34,642 live munitions on
15 Vieques.

16 (21) Through the end of Fiscal Year 2009, the
17 Navy had spent a total of \$120.4 million to support
18 the cleanup of its former facilities on Vieques, and
19 had estimated that an additional \$269.9 million
20 would be needed from Fiscal Year 2010 into the fu-
21 ture to complete all planned cleanup actions.

22 (22) The Navy has estimated that remedial ac-
23 tions to clean up unexploded ordnance, other dis-
24 carded munitions, and munitions constituents will
25 not be completed until Fiscal Year 2020, and has es-

1 timated that the entire cleanup of Vieques will not
2 be completed until Fiscal Year 2045.

3 (23) Although cleanup efforts are underway on
4 Vieques, island residents have continued to express
5 concern about the health impacts from long-term ex-
6 posure to environmental contamination as a result of
7 decades of Navy operations on Vieques.

8 (24) In 2007, after exhausting their adminis-
9 trative remedies, over 7,000 residents of Vieques
10 brought a lawsuit against the United States under
11 the Federal Tort Claims Act (FTCA), seeking mone-
12 tary compensation for damages to their health that
13 they claimed were caused by exposure to contamina-
14 tion resulting from past Navy operations.

15 (25) The residents of Vieques have based their
16 tort claims on EPA-documented past violations by
17 the Navy of Clean Water Act discharge permit re-
18 quirements and other environmental statutes; find-
19 ings by independent researchers who have attributed
20 elevated levels of contaminants on Vieques to dec-
21 ades of Navy operations; insufficient notification by
22 the Navy of the release of these contaminants into
23 the environment; and higher rates of occurrence of
24 certain diseases among residents of Vieques, includ-

1 ing cancer, cirrhosis, hypertension, and diabetes, as
2 reported by numerous researchers.

3 (26) The residents of Vieques originally filed
4 their claims in the United States District Court for
5 the District of Columbia, which subsequently trans-
6 ferred those claims to the United States District
7 Court for the District of Puerto Rico.

8 (27) In July 2009, the United States filed a
9 motion to dismiss the claims based on a lack of sub-
10 subject matter jurisdiction under the Federal Tort
11 Claims Act (FTCA), asserting that the Navy’s train-
12 ing activities on Vieques fell within the Act’s “dis-
13 cretionary function exception”, which is generally in-
14 tended to prevent the United States from being held
15 liable for the performance of actions involved in car-
16 rying out the role of the Federal Government and
17 which immunizes the United States for acts or omis-
18 sions of its employees that involve policy decisions,
19 even when such decisions cause harm to United
20 States Citizens.

21 (28) In March 2010, a district court judge in
22 the United States District Court for the District of
23 Puerto Rico, in a brief sympathetic to the people of
24 Vieques, nonetheless granted the United States’ mo-
25 tion to dismiss based on lack of subject matter juris-

1 diction, without ruling on the merits of plaintiffs’
2 substantive claims.

3 (29) Plaintiffs have appealed that decision to
4 the United States Court of Appeals for the First
5 Circuit, and such appeal is currently pending.

6 (30) In a report published in November 2009,
7 the Puerto Rico Cancer Registry, then a part of the
8 Puerto Rico Department of Health, found elevated
9 levels of various cancers among residents of Vieques
10 relative to cancer levels in mainland Puerto Rico.

11 (31) Numerous other non-Federal studies of
12 Vieques in the last 2 decades have found elevated
13 levels of contaminants in the hair samples of Vieques
14 residents, as well as in the island’s soil, food supply,
15 and water.

16 (32) A 1999 study conducted by Dr. Colon de
17 Jorge reported that 34 percent of the residents of
18 the island of Vieques, Puerto Rico, have toxic levels
19 of mercury in their blood stream, 55 percent are
20 contaminated with lead, 69 percent are contami-
21 nated with arsenic, 69 percent are contaminated
22 with cadmium, 90 percent are contaminated with
23 aluminum, and 93 percent are contaminated with
24 antimony.

1 (33) A February 2001 analysis by Carmen
2 Ortiz Roque, MD., M.P.H., M.S. reported that the
3 residents of the island of Vieques, Puerto Rico, when
4 compared to the inhabitants of the main island of
5 Puerto Rico, are suffering with 30 percent higher
6 rates of cancer, 381 percent higher rates of hyper-
7 tension, 95 percent higher rates of cirrhosis of the
8 liver, and 41 percent higher rates of diabetes.

9 (34) Such analysis also reported that the infant
10 mortality rate on the island of Vieques, Puerto Rico,
11 when compared to infants born on the main island
12 of Puerto Rico, is 25 percent higher.

13 (35) The Agency for Toxic Substances and Dis-
14 ease Registry (ATSDR) conducted a series of Public
15 Health Assessments on Vieques from 2001 through
16 2003, examining the potential for human exposure
17 to contaminants through the air, soil, drinking water
18 supplies and groundwater, and consumption of fish
19 and shellfish, and issued a finding of “No Apparent
20 Public Health Hazard” for each of these pathways.

21 (36) The ATSDR’s analytic methods and find-
22 ings with respect to Vieques have been subject to
23 criticism.

24 (37) Critics of ATSDR’s methods and findings
25 include Dr. John P. Wargo, the Chair of the Yale

1 College Environmental Studies Program and an ex-
2 pert in assessing human exposure to hazardous sub-
3 stances.

4 (38) Dr. Wargo, in his 2009 book entitled
5 “Green Intelligence: Creating Environments That
6 Protect Human Health”, expressed the view that the
7 Federal Government has yet to conduct a “scientif-
8 ically defensible study” with respect to environ-
9 mental contamination on Vieques and its possible
10 health effects on the island’s residents.

11 (39) Various non-Federal researchers who have
12 studied Vieques in recent years have concluded that
13 environmental contamination levels are higher than
14 the ATSDR has reported, that the potential health
15 hazards are therefore likely to be greater overall
16 than the ATSDR has found, and that there is a
17 more definitive link between the Navy’s past activi-
18 ties and the various health problems that have been
19 cited by the island’s residents.

20 (40) In March 2009, the House Committee on
21 Science and Technology’s Subcommittee on Inves-
22 tigation and Oversight held a hearing in which
23 members of the Subcommittee questioned the
24 ATSDR’s findings about Vieques, raising questions
25 about the manner in which ATSDR conducted its

1 Public Health Assessments and the accuracy of the
2 conclusions reached by the agency.

3 (41) In the summer of 2009, ATSDR indicated
4 that it would re-examine its prior findings in order
5 to determine whether the available evidence revealed
6 a greater risk of human exposure to contamination
7 than previously understood.

8 (42) In a November 2009 progress report,
9 ATSDR announced that it expected to “change some
10 of its earlier conclusions regarding the safety of en-
11 vironmental exposures on Vieques”.

12 (43) ATSDR further announced in its Novem-
13 ber 2009 progress report that it expected: to rec-
14 ommend biomonitoring to determine whether persons
15 living on Vieques have been exposed to harmful
16 chemicals, and, if so, at what levels those chemicals
17 may be in their bodies; to work with health officials
18 from Puerto Rico to conduct more in-depth evalua-
19 tion of health outcomes; to work with community
20 members and health officials from Puerto Rico to
21 issue science-based, precautionary recommendations
22 to protect public health; and to work with partners
23 in Puerto Rico’s health care community to encour-
24 age improved access to health care for residents of
25 Vieques.

1 (44) In a February 2008 letter to the Governor
2 of Puerto Rico, then-presidential candidate Barack
3 Obama stated that his Administration would “closely
4 monitor the health of the people of Vieques and pro-
5 mote appropriate remedies to health conditions
6 caused by military activities conducted by the U.S.
7 Navy on Vieques” and “work to evaluate and expand
8 the existing land use plan for the former U.S. Navy
9 lands to prioritize improving the lives of the Island’s
10 residents and the sustainable economic development
11 of the people of Vieques”.

12 (45) The March 2011 Report by the President’s
13 Task Force on Puerto Rico’s Status stated that
14 “better health care facilities are an urgent need for
15 the people of Vieques,” recommended that “HHS
16 should work closely with the governments of Puerto
17 Rico and Vieques to improve the quality of health
18 care for the residents of Vieques,” and concluded
19 that “a needs assessment should be completed to
20 identify the most effective and efficient way to en-
21 sure that the people of Vieques receive the care, in-
22 cluding expertise in environmental medicine, that
23 they need”.

24 (46) The March 2011 Report by the President’s
25 Task Force on Puerto Rico’s Status further stated

1 that “there is much that the Federal Government
2 can do to improve the quality of life for the people
3 of Vieques”.

4 **SEC. 3. CONSTRUCTION OF A SPECIALTY HOSPITAL AND**
5 **TOXINS RESEARCH CENTER.**

6 (a) IN GENERAL.—The President, in consultation
7 with the Puerto Rico College of Physicians and Surgeons
8 of the University of Puerto Rico, Surgeon General of the
9 Navy, Director of the National Institutes of Health, Direc-
10 tor of the Centers for Disease Control and Prevention, Ad-
11 ministrators of the Environmental Protection Agency, and
12 other appropriate agencies (as determined by the Presi-
13 dent), shall acquire or convert real property located within
14 the Municipality of Vieques for the purpose of con-
15 structing a specialty hospital and toxins research center
16 that—

17 (1) with respect to the specialty hospital, pro-
18 vides treatment for the sick and injured, including
19 treatment of illnesses and diseases that are prevalent
20 in the Municipality of Vieques, such as cancer, hy-
21 pertension, and heavy metals poisoning; and

22 (2) with respect to the toxins research center—

23 (A) studies the existence and prevalence of
24 toxins in the Municipality of Vieques and the

1 impact of such toxins on plant, animal, and
2 human life;

3 (B) provides specific recommendations to
4 the local government and residents of the Mu-
5 nicipality of Vieques regarding the prevention of
6 exposure to harmful levels of toxins in air,
7 water, and food supplies; and

8 (C) coordinates research activities and
9 shares findings on an ongoing basis with med-
10 ical personnel at the hospital constructed pursu-
11 ant to this subsection.

12 (b) OPERATIONS.—The President, or his designee,
13 shall operate and maintain the quality of the hospital and
14 research center described in subsection (a) on a continuing
15 basis. In operating such hospital and research center, the
16 President, or his designee, shall consider the needs of the
17 residents of the Municipality of Vieques, taking into ac-
18 count the chemical weapons, toxic chemicals, and heavy
19 metals used by the Department of the Navy on the island
20 of Vieques and the potential health impacts associated
21 with use of such weapons, chemicals, and metals.

22 (c) PARTNERSHIPS.—The President, or his designee,
23 shall encourage partnerships with research universities for
24 the purpose of building interest in researching—

1 (1) the many health problems experienced by
2 the residents of the Municipality of Vieques; and

3 (2) the long-term effect that the use of the
4 weapons, chemicals, and heavy metals described in
5 subsection (b) may have on such residents.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—

7 (1) IN GENERAL.—Subject to paragraph (2),
8 there are authorized to be appropriated such sums
9 as may be necessary to carry out the provisions of
10 this section.

11 (2) LIMITATION OF APPROPRIATIONS.—The
12 President may not carry out the provisions of this
13 section or section 4 until the administrative claims
14 filed on May 18, 2009, by the Mayor of the Muni-
15 cipality of Vieques for money damages against the De-
16 partment of the Navy have been settled or com-
17 promised pursuant to section 2672 of title 28,
18 United States Code.

19 **SEC. 4. DEVELOPMENT AND IMPLEMENTATION OF A COM-**
20 **PREHENSIVE FEDERAL INTERAGENCY PLAN**
21 **FOR THE MUNICIPALITY OF VIEQUES.**

22 (a) FEDERAL INTERAGENCY PLAN.—

23 (1) IN GENERAL.—Not later than 1 year after
24 the date of the enactment of this Act, the President
25 shall develop a comprehensive Federal interagency

1 plan to ensure that the residents of the Municipality
2 of Vieques benefit from improved access to Federal
3 programs, Federal discretionary funding sources,
4 and Federal agency technical assistance.

5 (2) PLAN CONTENTS.—The Federal interagency
6 plan described in paragraph (1) shall include—

7 (A) a timeline, if appropriate, for the im-
8 plementation of any specific recommendations,
9 with respect to the island of Vieques, provided
10 by the President’s Task Force on Puerto Rico’s
11 Status;

12 (B) additional specific recommendations
13 and instructions to Federal agencies to utilize
14 resources within their existing authority to as-
15 sist the people of the Municipality of Vieques in
16 more expeditiously achieving their own eco-
17 nomic development, education, environmental,
18 infrastructure, health care, and community
19 goals, including a specific plan under which the
20 Federal Government shall convey to the Munici-
21 pality all lands that are administered by the
22 Secretary of the Interior as of the date of the
23 enactment of this Act and are determined by
24 the Administrator of the Environmental Protec-

tion Agency to be appropriate to be placed
under control of the Municipality; and

(C) a requirement for the development of
and entering into memoranda of understandings
between the Municipality and individual Federal
agencies for the purpose of specifically defining
duties and responsibilities with regard to the
implementation of such plan.

(b) APPOINTMENT OF OMBUDSMAN.—

(1) IN GENERAL.—The President shall appoint
a Federal ombudsman for the Municipality of
Vieques who shall monitor the development and im-
plementation of the Federal interagency plan de-
scribed in subsection (a).

(2) REPORT.—Not later than 2 years after the
date of the completion of the Federal interagency
plan described in subsection (a), the Federal om-
budsman shall submit to Congress a report that in-
cludes—

(A) a status update on the implementation
of such plan; and

(B) recommendations for optimizing the
impact of such plan.

1 **SEC. 5. SETTLEMENT OF CLAIMS AGAINST THE UNITED**
2 **STATES FOR CERTAIN RESIDENTS OF THE IS-**
3 **LAND OF VIEQUES, PUERTO RICO.**

4 (a) IN GENERAL.—An individual shall be awarded
5 \$10,000 for a claim made under this section if such indi-
6 vidual—

7 (1) can demonstrate that he or she was a resi-
8 dent on the island of Vieques, Puerto Rico, during
9 or after the Department of the Navy's usage of
10 chemical weapons, toxic chemicals, and heavy metals
11 for military training operations on the island; and

12 (2) filed a claim on or before the date of the
13 enactment of this Act against the United States
14 Government for personal injury, including illness or
15 death arising from such usage of such weapons,
16 chemicals, and metals.

17 (b) ADDITIONAL AWARD AMOUNTS RELATED TO
18 SPECIFIED DISEASES.—Any individual who—

19 (1) meets the requirements under subsection
20 (a); and

21 (2) submits written medical documentation that
22 he or she contracted a specified disease during or
23 after the Department of the Navy's usage of chem-
24 ical weapons, toxic chemicals, and heavy metals for
25 military training operations on the island of Vieques,
26 Puerto Rico,

1 shall, in addition to the amount awarded under subsection
2 (a), be awarded \$50,000 (in the case of an individual who
3 is diagnosed with 1 such disease), \$80,000 (in the case
4 of an individual who is diagnosed with 2 such diseases),
5 or \$110,000 (in the case of an individual who is diagnosed
6 with 3 or more such diseases).

7 (c) APPOINTMENT OF SPECIAL MASTER.—The Presi-
8 dent shall appoint a special master to resolve expeditiously
9 any disputes between the Attorney General and an indi-
10 vidual with respect to the determination of an award
11 under this section.

12 (d) GUIDANCE.—The Attorney General may use as
13 guidance the Radiation Exposure Compensation Act (Pub-
14 lic Law 101–426) and any regulation prescribed to inter-
15 pret, implement, or administer such Act—

16 (1) in determining whether a claim filed under
17 this section meets the requirements of this section;

18 (2) to establish procedures whereby individuals
19 may submit claims for payments under this section;
20 and

21 (3) for any other reason that the Attorney Gen-
22 eral determines that such guidance is necessary, ex-
23 cept that the provisions of chapter 171 of title 28,
24 United States Code (relating to settlements and

1 compromises of claims), shall apply to claims cog-
2 nizable under this section.

3 (e) SOURCE OF AWARD.—A payment of an award
4 made to an individual under this section shall be payable
5 out of any moneys authorized for appropriation under sec-
6 tion 1304 of title 31, United States Code, as if a settle-
7 ment had been entered into between claimants and the
8 Government.

9 (f) RELEASE.—The acceptance by an individual of a
10 payment of an award under this section shall—

11 (1) be final and conclusive on the individual;

12 (2) be deemed to be in full settlement of the
13 claim described in subsection (a)(2); and

14 (3) constitute a complete release by the indi-
15 vidual of such claim against the United States and
16 against any employee of the United States acting in
17 the course of his employment who is involved in the
18 matter giving rise to the claim.

19 (g) SPECIFIED DISEASE DEFINED.—In this section,
20 the term “specified disease” means any disease that is life
21 threatening, chronic, or is related to heavy metals toxicity.

○