

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.

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## 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

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## 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-  
21chanical 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-  
14      pleted uranium, white phosphorous, arsenic, mer-  
15      cury, lead, aluminum, cadmium, antimony, magne-  
16      sium, TNT, PCBs, RDX, barium, cyanide, solvents,  
17      and pesticides. All of these weapons and chemicals  
18      have been deployed on the island of Vieques, Puerto  
19      Rico, in the interest of training for the defense of  
20      our 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 recover-  
14 ed 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      ject 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 ministrator 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 Muni-  
21 cipality 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-

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

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

9           (b) APPOINTMENT OF OMBUDSMAN.—

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

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

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

22           (B) recommendations for optimizing the  
23           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.

○