

1 H.479

2 Introduced by Representatives Klein of East Montpelier and Clarkson of

3 Woodstock

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; energy; taxation; storage of

7 radioactive material; nuclear generating plant; postclosure funding

8 Statement of purpose: This bill proposes to establish a tax on the storage of

9 spent nuclear fuel in Vermont and a tax to fund postclosure activities at nuclear

10 generating plants in Vermont.

11 An act relating to a tax on the storage of spent nuclear fuel and a tax to fund
12 postclosure activities at nuclear generating plants

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 32 V.S.A. chapter 215 is added to read:

15 CHAPTER 215. SPENT NUCLEAR FUEL TAX

16 § 8701. DEFINITIONS

17 In this chapter:

18 (1)(A) “Affiliated entity” means any person that, after January 1, 2011:

19 (i) Owned or controlled or owns or controls an interest, directly or

20 indirectly, in the owner or operator of a facility or site at which spent nuclear

1 fuel is stored in Vermont or at which spent nuclear fuel stored in Vermont was
2 generated; or

3 (ii) Was or is a corporation that, directly or indirectly, was or is a
4 parent of the owner or operator of a facility or site at which spent nuclear fuel
5 is stored in Vermont or at which spent nuclear fuel stored in Vermont was
6 generated.

7 (B) For the purpose of this subdivision (1), “interest” excludes a right
8 or obligation of a Vermont company, utility, electric department, or
9 governmental entity that arises only because the company, utility, electric
10 department, or governmental entity is a purchaser, user, transmitter, distributor,
11 reseller, or consumer of power produced by a facility that generates spent
12 nuclear fuel or at which spent nuclear fuel is stored.

13 (2) “Commissioner of public service” means the commissioner of public
14 service under 30 V.S.A. § 1.

15 (3) “Commissioner of taxes” means the commissioner of taxes under
16 section 3101 of this title.

17 (4) “Dry cask” means a container in which spent nuclear fuel is stored
18 and cooled by air, and all associated components and systems. It does not
19 include a spent nuclear fuel storage pool.

20 (5) “Management” means:

1 (A) A director of a corporation that owns or operates a facility or site
2 at which spent nuclear fuel is stored;

3 (B) The chief executive officer, chief operating officer, or chief fiscal
4 officer of such corporation; or

5 (C) A person who has authority to direct whether spent nuclear fuel is
6 stored at a facility or site, either on the person's own initiative or as a member
7 of a board that has such authority, unless the person is an officer or employee
8 of federal or state government and exercises such authority in the person's
9 capacity as such an officer or employee.

10 (6) "Person" includes a natural person, a partnership, a corporation, a
11 parent or subsidiary corporation, a jointly owned or jointly controlled
12 corporation, a limited liability corporation, a joint venture, an affiliated entity,
13 or any other legal or commercial entity.

14 (7) "Spent nuclear fuel" means fuel that has been withdrawn from a
15 nuclear reactor following irradiation. "Spent nuclear fuel" includes the
16 byproduct material, source material, special nuclear material, and other
17 radioactive materials and wastes associated with fuel assemblies. For the
18 purpose of this definition, "byproduct material," "source material," and
19 "special nuclear material" are as defined in 10 C.F.R. § 72.3.

20 (8) "Spent nuclear fuel storage pool" means a facility in which spent
21 nuclear fuel is stored and cooled by liquid.

1 § 8702. TAX; ESTABLISHMENT

2 (a) There is established an annual tax on the storage of spent nuclear fuel in
3 Vermont.

4 (b) The annual tax for each dry cask located in the state shall be \$2 million.

5 (c) The annual tax for spent nuclear fuel in a spent nuclear fuel storage pool
6 located in the state shall be a volumetric charge by unit of spent nuclear fuel
7 determined each year by the commissioner of public service no later than
8 May 1. To determine the volumetric charge, the commissioner of public
9 service shall divide \$2 million by the average cubic capacity of the dry casks
10 located in Vermont and multiply the result by 50 percent.

11 § 8703. PAYMENT

12 (a) No later than June 1 of each year, each person that stores spent nuclear
13 fuel in Vermont shall pay to the commissioner of taxes the tax established
14 under this chapter.

15 (b) In consultation with the commissioner of public service, the
16 commissioner of taxes shall prescribe the form to be used by a person making
17 a payment under this section.

18 § 8704. CRIMINAL OFFENSE

19 (a) A person who violates subsection 8703(a) of this title shall be fined not
20 more than \$100,000.00 for each day on which the person stores spent nuclear
21 fuel in Vermont without full payment of the tax due under this chapter.

1 Criminal liability for this act shall apply jointly and severally to a person who
2 is the owner or operator of a facility or site at which the spent nuclear fuel is
3 stored, to a person who is an affiliated entity, and to a person who is
4 management of the owner or operator and shall not apply to a person who is a
5 regular employee of the owner or operator and who is not management.

6 (b) The penalties established by this section shall be in addition to other
7 remedies afforded for violations of this title or any other provision of law.

8 § 8705. USE OF FUNDS

9 Funds received under this chapter shall be disbursed annually as follows:

10 (1) 17 percent to the general fund created under section 435 of this title.

11 (2) 11 percent to the education fund under 16 V.S.A. § 4025.

12 (3) Six percent to the Town of Vernon, Vermont.

13 (4) The remainder shall be deposited in the clean energy development
14 fund created under 30 V.S.A. § 8015.

15 § 8706. INFLATION ADJUSTMENT

16 Dollar figures stated in this chapter are in 2012 dollars and shall be adjusted
17 annually for inflation in accordance with a method prescribed by the
18 commissioner of taxes in the exercise of his or her reasonable discretion.

19 Sec. 2. 16 V.S.A. § 4025(a)(8) is added to read:

20 (8) Moneys directed to the education fund under 10 V.S.A. § 8704
21 (spent nuclear storage tax; use of funds).

1 Sec. 3. 30 V.S.A. § 8015 is amended to read:

2 § 8015. VERMONT CLEAN ENERGY DEVELOPMENT FUND

3 (a) Creation of fund.

4 (1) There is established the Vermont clean energy development fund to
5 consist of each of the following:

6 (A) The proceeds due the state under the terms of the memorandum
7 of understanding between the department of public service and Entergy
8 Nuclear VY and Entergy Nuclear Operations, Inc. that was entered under
9 public service board docket 6812; together with the proceeds due the state
10 under the terms of any subsequent memoranda of understanding entered before
11 July 1, 2005 between the department of public service and Entergy Nuclear
12 VY and Entergy Nuclear Operations, Inc.

13 (B) Moneys directed to the fund under 10 V.S.A. § 8704 (spent
14 nuclear storage tax; use of funds).

15 (C) Any other monies that may be appropriated to or deposited into
16 the fund.

17 Sec. 4. 32 V.S.A. § 435 is amended to read:

18 § 435. GENERAL FUND

19 (a) There is established a general fund which shall be the basic operating
20 fund of the state. The general fund shall be used to finance all expenditures for
21 which no special revenues have otherwise been provided by law.

1 (b) The general fund shall be composed of revenues from the following
2 sources:

3 (1) Alcoholic beverage tax levied pursuant to 7 V.S.A. chapter 15 of
4 ~~Title 7~~;

5 (2) [Repealed.]

6 (3) Electrical energy tax levied pursuant to chapter 213 of this title;

7 (4) Corporate income and franchise taxes levied pursuant to chapter 151
8 of this title;

9 (5) Individual income taxes levied pursuant to chapter 151 of this title;

10 (6) All corporation taxes levied pursuant to chapter 211 of this title;

11 (7) Meals and rooms taxes levied pursuant to chapter 225 of this title;

12 (8) [Deleted.]

13 (9) Revenues from the racing fund consistent with ~~section~~ 31 V.S.A.
14 § 611 of Title 31;

15 (10) 33 percent of the revenue from the property transfer taxes levied
16 pursuant to chapter 231 of this title and the revenue from the gains taxes levied
17 each year pursuant to chapter 236 of this title;

18 (11) Two-thirds of the revenue from sales and use taxes levied pursuant
19 to chapter 233 of this title;

20 (12) Moneys directed to the general fund under 10 V.S.A. § 8704 (spent
21 nuclear storage tax; use of funds);

1 (13) All other revenues accruing to the state not otherwise required by
2 law to be deposited in any other designated fund or used for any other
3 designated purpose.

4 Sec. 5. 32 V.S.A. chapter 216 is added to read:

5 CHAPTER 216. NUCLEAR GENERATING PLANTS;
6 POSTCLOSURE FUNDING TAX

7 § 8751. PURPOSE

8 The purposes of this chapter include each of the following:

9 (1) To encourage the productive use of a site once a nuclear generating
10 plant on the site ceases to generate electricity.

11 (2) To diminish any negative impacts to the economy of the state, to
12 government revenues, and to electric consumers from having unavailable for
13 long periods a site that is well-suited and -situated for electric generation and
14 transmission.

15 (3) To reduce the risk that other taxpayers, Vermont's ratepayers, or
16 Vermont's retail electric utilities will experience adverse claims or costs
17 resulting from a shortage of available funds for postclosure activities at a
18 nuclear generating plant.

19 § 8752. DEFINITIONS

20 In this chapter:

1 (1)(A) “Affiliated entity” means any person or business organization
2 that, on or after January 1, 2011:

3 (i) owned or controlled or owns or controls an interest, directly or
4 indirectly, in the owner or operator of a nuclear generating plant; or

5 (ii) was or is a corporation that, directly or indirectly, was or is a
6 parent of the owner or operator of a nuclear generating plant.

7 (B) For the purpose of this subdivision (1):

8 (i) “Business organization” includes a parent or subsidiary
9 corporation, a jointly owned or jointly controlled corporation, a limited
10 liability corporation, a joint venture, a partnership, or any other legal or
11 commercial entity.

12 (ii) “Interest” excludes a right or obligation of a Vermont
13 company, utility, or electric department that arises only because the company,
14 utility, or electric department is a purchaser, user, transmitter, distributor, or
15 reseller of power produced by the nuclear generating plant.

16 (2) “Board” means the public service board under 30 V.S.A. § 3.

17 (3) “Decommission” or “decommissioning” means removal of a nuclear
18 generating plant safely from service and radiological decontamination in
19 accordance with the regulations of the Nuclear Regulatory Commission
20 (NRC). The term includes reduction of residual radioactivity to a level that
21 permits release of the property for unrestricted use.

1 (4) “Department” means the department of public service under
2 30 V.S.A. § 1.

3 (5) “Existing nuclear generating plant” means a nuclear generating plant
4 in existence as of January 1, 2011.

5 (6) “Greenfield condition” means removal of all above- and
6 below-ground structures, equipment, and foundations from a site and, if
7 appropriate, regrading and reseeded the land. The term includes activities that
8 occur following permanent cessation of a site’s use for generating electricity
9 from nuclear energy. The term excludes activities required by the NRC for
10 radiological decontamination.

11 (7) “Management” means, except when used in “management of spent
12 fuel” or “spent fuel management”:

13 (A) A director of a corporation that owns or operates a nuclear
14 generating plant;

15 (B) The chief executive officer, chief operating officer, or chief fiscal
16 officer of such corporation; or

17 (C) A person who has authority to direct the operation of a nuclear
18 generating plant, either on the person’s own initiative or as a member of a
19 board that has such authority, unless the person is an officer or employee of
20 federal or state government and exercises such authority in the person’s
21 capacity as such an officer or employee.

1 (8) “Managing spent fuel,” “management of spent fuel,” or “spent fuel
2 management” means the control and supervision of uranium fuel that has been
3 used in and removed from the reactor of a nuclear generating plant until such
4 time as the fuel is removed from Vermont and placed in a federally certified
5 long-term storage facility. The term includes the storage of such fuel at the site
6 of a nuclear generating plant and all associated operations, security, and
7 maintenance. The term excludes decommissioning of a nuclear generating
8 plant and restoration of the site of such a plant to a greenfield condition.

9 (9) “Nuclear generating plant” means a facility located in Vermont that
10 produces or has produced electricity using an atomic reaction as an energy
11 source for heat to provide steam to a turbine generator. The term includes a
12 nuclear generating plant that has ceased producing electricity.

13 (10) “Operator” means a person or entity that, on or after January 1,
14 2011, operated or operates a nuclear generating plant or held or holds a
15 certificate under this title allowing the person or entity to operate a nuclear
16 generating plant.

17 (11) “Owner” means a person or entity that, on or after January 1, 2011,
18 owned or owns a nuclear generating plant or held or holds a certificate under
19 this title consenting to the purchase of such a plant by the person or entity.

20 (12) “Postclosure activities” means all activities and monitoring that
21 occur or are required to occur once a nuclear generating plant permanently

1 ceases generating electricity, including decommissioning, spent fuel
2 management, and restoration to greenfield condition.

3 § 8753. TAX; ESTABLISHMENT

4 (a) There is established an annual postclosure funding tax of \$25 million on
5 each nuclear generating plant in Vermont.

6 (b) Assessment of the tax on a nuclear generating plant shall cease if, after
7 notice and an opportunity to be heard, the board issues an order finding that all
8 postclosure activities at the plant have been completed.

9 § 8754. PAYMENT

10 (a) No later than June 1 of each year, each person that owns or operates a
11 nuclear generating plant in Vermont shall pay to the commissioner of taxes the
12 tax established under this chapter.

13 (b) The commissioner of taxes shall prescribe the form to be used by a
14 person making a payment under this section.

15 § 8755. CRIMINAL OFFENSE

16 (a) A person who violates subsection 8754(a) of this title shall be fined not
17 more than \$100,000.00 for each day on which the person owns or operates a
18 nuclear generating plant without full payment of the tax due under this chapter.
19 Criminal liability for this act shall apply jointly and severally to a person who
20 is the owner or operator of a nuclear generating plant, to a person who is an
21 affiliated entity, and to a person who is management of the owner or operator

1 and shall not apply to a person who is a regular employee of the owner or
2 operator and who is not management.

3 (b) The penalties established by this section shall be in addition to other
4 remedies afforded for violations of this title or any other provision of law.

5 § 8756. POSTCLOSURE TRUST FUND

6 (a) A postclosure trust fund for each nuclear generating plant is established
7 in the office of the state treasurer.

8 (b) All revenues received by the state under this chapter from a nuclear
9 generating plant shall be deposited into the plant's trust fund.

10 (c) Each trust fund shall be administered by the state treasurer. The
11 treasurer may invest moneys in the fund in accordance with the provisions of
12 section 434 of this title. All balances in the fund at the end of the fiscal year
13 shall be carried forward. Interest earned shall remain in the fund. The
14 treasurer's annual financial report to the governor and the general assembly
15 shall contain an accounting of receipts, disbursements, and earnings of the
16 fund.

17 (d) Balances in a trust fund shall be expended solely as set forth under this
18 chapter and shall not be used for the general obligations of government.

1 § 8757. DISBURSEMENTS FROM TRUST FUND

2 (a) Moneys from a trust fund created under this chapter shall be disbursed
3 only in accordance with this section and section 8758 (return of balance) of
4 this title.

5 (b) Until such time as the board issues an order under section 8758 of this
6 title, moneys from a trust fund created under this chapter shall be disbursed
7 only if each of the following applies:

8 (1) The disbursement will pay for one or more postclosure activities
9 completed at a nuclear generating plant for which the tax under this chapter has
10 been paid.

11 (2) If the disbursement is for a postclosure activity at the plant that
12 constitutes decommissioning, all moneys otherwise set aside to pay for the
13 activity, including moneys contained in a decommissioning trust fund
14 established under federal law, have first been exhausted.

15 (c) On issuance of a warrant from the commissioner of public service
16 stating the amount to be disbursed and the completed postclosure activities to
17 which the amount applies, the treasurer shall disburse such amount to the
18 person named by the commissioner in the warrant.

19 (d) The commissioner of public service shall not issue a warrant under this
20 section except on receipt of an appropriate certification, under the pains and
21 penalties of perjury, from a person completing a postclosure activity at a

1 nuclear generating plant. The commissioner shall determine the appropriate
2 form, content, and supporting information necessary for such a certification. A
3 person who willfully makes a false certification to the commissioner of public
4 service under this subsection shall be guilty of perjury and shall be punished
5 accordingly. Any moneys disbursed under this section in reliance on a false
6 certification to the commissioner of public service may be recovered from the
7 person receiving the disbursement, with interest as set out under 9 V.S.A.
8 § 41a(a) (interest; legal rate), through action by the attorney general in the civil
9 division of the superior court.

10 (e) For the purpose of 30 V.S.A. § 20(a)(1)(v) (retention of personnel)
11 and 21(f) (allocation to nuclear generating plant), the actions and costs of the
12 department of public service under this section shall be considered the
13 monitoring of postclosure activities.

14 § 8758. RETURN OF BALANCE

15 The balance of a nuclear generating plant's trust fund under this chapter,
16 including interest that may have accumulated within the fund, shall be returned
17 to the owner of the nuclear generating plant on issuance by the board, after
18 notice and opportunity for hearing, of an order finding that all postclosure
19 activities at the plant have been completed.

1 § 8759. STATE; NO LIABILITY

2 The state of Vermont assumes no liability, through the enactment and
3 implementation of this chapter or otherwise, for the completion, supervision, or
4 funding of any postclosure activity at a nuclear generating plant or with respect
5 to any other matter related to such a plant.

6 § 8760. INFLATION ADJUSTMENT

7 Dollar figures stated in this chapter are in 2012 dollars and shall be adjusted
8 annually for inflation in accordance with a method prescribed by the
9 commissioner of taxes in the exercise of his or her reasonable discretion.

10 Sec. 6. SEVERABILITY

11 The provisions of this act are severable. If any provision of this act is
12 invalid or if any application thereof to any person or circumstance is invalid,
13 the invalidity shall not affect other provisions or applications which can be
14 given effect without the invalid provision or application.

15 Sec. 7. EFFECTIVE DATE

16 This act shall take effect on July 1, 2012.