

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred House Bill No. 135
3 entitled “An act relating to authorizing the Vermont Department of Health to
4 charge fees necessary to support Vermont’s status as a Nuclear Regulatory
5 Commission Agreement State” respectfully reports that it has considered the
6 same and recommends that the Senate propose to the House that the bill be
7 amended by striking out all after the enacting clause and inserting in lieu
8 thereof the following:

9 Sec. 1. 18 V.S.A. chapter 32 is amended to read:

10 CHAPTER 32. IONIZING AND NONIONIZING
11 RADIATION CONTROL

12 § 1651. DEFINITIONS

13 In this chapter:

14 (1) ~~Ionizing radiation means gamma rays and x rays, alpha and beta~~
15 ~~particles, high speed electrons, neutrons, protons, and other nuclear particles.~~

16 (2) ~~Nonionizing radiation means radiations of any wavelength in the~~
17 ~~entire electromagnetic spectrum except those radiations defined above as~~
18 ~~ionizing. Nonionizing radiations include, but are not limited to: Ultraviolet,~~
19 ~~visible, infrared, microwave, radiowave, low frequency electromagnetic~~
20 ~~radiation; infrasonic, sonic and ultrasonic waves; electrostatic and magnetic~~
21 ~~fields.~~

1 ~~(3) Radioactive material means any radioactive material, be it solid,~~
2 ~~liquid, or gas, which emits ionizing radiation spontaneously.~~

3 ~~(4) Byproduct material~~ “Byproduct material” means each of the
4 following:

5 (A) any Any radioactive material, ~~except other than~~ special nuclear
6 material, that is yielded in or made radioactive by exposure to the radiation
7 incident to the process of producing or utilizing special nuclear material.

8 (B) The tailings or wastes produced by the extraction or
9 concentration of uranium or thorium from any ore processed primarily for its
10 source material content, including discrete surface wastes resulting from
11 uranium solution extraction processes. However, “byproduct material” does
12 not include underground ore bodies depleted by these solution extraction
13 operations.

14 (C) Any discrete source of radium-226 that is produced, extracted, or
15 converted after extraction for use for a commercial, medical, or research
16 activity.

17 (D) Any material that has been made radioactive by use of a particle
18 accelerator and is produced, extracted, or converted after extraction for use for
19 a commercial, medical, or research activity.

20 (E) Any discrete source of naturally occurring radioactive material,
21 other than source material, that is extracted or converted after extraction for

1 use in a commercial, medical, or research activity, if the Governor, after
2 determination by the NRC, declares by order that the source would pose a
3 threat similar to the threat posed by a discrete source of radium-226 to the
4 public health and safety.

5 (2) “Commissioner” means the Commissioner of Health.

6 (3) “Department” means the Department of Health.

7 ~~(5) General license~~ (4) “General license” means a license effective
8 under regulations promulgated by the state State radiation control agency
9 without the filing of an application to transfer, acquire, own, possess, or use
10 quantities of, or devices or equipment utilizing byproduct, source, or special
11 nuclear materials or other radioactive material occurring naturally or produced
12 artificially.

13 (5) “Ionizing radiation” means gamma rays and x-rays, alpha and beta
14 particles, high speed electrons, neutrons, protons, and other nuclear particles.

15 (6) “Nonionizing radiation” means radiations of any wavelength in the
16 entire electromagnetic spectrum except those radiations defined in this section
17 as ionizing. Nonionizing radiations include ultraviolet, visible, infrared,
18 microwave, radiowave, low frequency electromagnetic radiation; infrasonic,
19 sonic, and ultrasonic waves; electrostatic and magnetic fields.

20 (7) “NRC” means the U.S. Nuclear Regulatory Commission or any
21 successor agency of the United States to the Commission.

1 (8) “Radioactive material” means any material, whether solid, liquid, or
2 gas, that emits ionizing radiation spontaneously. The term includes material
3 made radioactive by a particle accelerator, byproduct material, naturally
4 occurring radioactive material, source material, and special nuclear material.

5 ~~(6) Specific license~~ (9) “Specific license” means a license, issued to a
6 named person after application to use, manufacture, produce, transfer, receive,
7 acquire, own, or possess quantities of, or devices or equipment utilizing
8 byproduct, source, or special nuclear materials or other radioactive material
9 occurring naturally or produced artificially.

10 ~~(7) The department of health is the state radiation control agency, called~~
11 ~~the agency herein.~~

12 ~~(8) Source material~~ (10) “Source material” means each of the
13 following:

14 (A) uranium, thorium, or any combination of those elements, in any
15 physical or chemical form;

16 (B) any other material ~~which the governor~~ that the Governor declares
17 by order to be source material after the ~~United States Nuclear Regulatory~~
18 ~~Commission, or any successor thereto,~~ NRC has determined the material to be
19 ~~such~~ source material; or

20 ~~(B)(C) ores containing one or more of the foregoing materials, that~~
21 contain uranium, thorium, or any combination of those elements in a

1 concentration by weight of 0.05 percent or more or in such lower concentration
2 as the ~~governor~~ Governor declares by order to be source material after the
3 United States Nuclear Regulatory Commission, or any successor thereto, NRC
4 has determined the material in such concentration to be source material.

5 ~~(9) Special nuclear material~~ (11) “Special nuclear material” means:

6 (A) plutonium, uranium ~~223~~ 233, uranium enriched in the isotope
7 233 or in the isotope 235, and any other material which the governor that the
8 Governor declares by order to be special nuclear material after the United
9 States Nuclear Regulatory Commission, or any successor thereto, NRC has
10 determined the material to be such ~~special nuclear material~~, but does not
11 include source material; or

12 (B) any material artificially enriched by any ~~of the foregoing~~
13 elements, isotopes, or materials listed in subdivision (A) of this subdivision
14 (11), but does not include source material.

15 § 1652. STATE RADIATION CONTROL

16 (a) The Department is the radiation control agency for the State of
17 Vermont. The Commissioner of Health may designate the Radiation Control
18 Director of Occupational Health within the Department as the individual who
19 shall perform the functions vested in the ~~agency~~ Department by this chapter.

20 (b) The ~~Agency~~ Department shall, for the protection of the occupational
21 and public health and safety, develop programs for the control of ionizing and

1 ~~non-ionizing~~ nonionizing radiation compatible with federal programs for
2 regulation of byproduct, source, and special nuclear materials.

3 (c) The Agency Department may adopt, amend, and repeal rules under
4 3 V.S.A. chapter 25:

5 (1) ~~which~~ that may provide for licensing and registration for the control
6 of sources of ionizing radiation;

7 (2) ~~and that may provide~~ for the control and regulation of sources of
8 ~~non-ionizing~~ nonionizing radiation.

9 (d) The Agency Department shall advise, consult, and cooperate with other
10 agencies of the State, the federal government, other states and interstate
11 agencies, political subdivisions, industries, and with groups concerned with
12 control of sources of ionizing and ~~non-ionizing~~ nonionizing radiation.

13 (e) Applicants for registration of X-ray equipment shall pay an annual
14 registration fee of \$85.00 per piece of equipment.

15 (f) Fees collected under this section shall be credited to a special fund
16 established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and
17 shall be available to the Department to offset the costs of providing services
18 relating to licensing and registration and controlling sources of ionizing
19 radiation.

1 § 1653. FEDERAL–STATE AGREEMENTS

2 (a) The ~~governor~~ Governor, on behalf of the ~~state~~ State of Vermont, may
3 enter into agreements with the federal government providing for
4 discontinuance of certain of the federal government’s responsibilities with
5 respect to byproduct, source, and special nuclear materials and the assumption
6 ~~thereof of these responsibilities~~ by the ~~state~~ State of Vermont.

7 (b) In the event of such agreement:

8 (1) The ~~agency~~ Department shall provide by rule for general or specific
9 licensing of ~~byproducts~~ byproduct, source, special nuclear materials, or devices
10 or equipment utilizing such materials. The rule shall provide for amendment,
11 suspension, or revocation of licenses. A rule adopted under this subsection
12 shall be consistent with regulations duly adopted by the NRC except as the
13 Commissioner determines is necessary to protect public health.

14 (2) The ~~agency~~ Department shall ~~be authorized~~ have authority to:

15 (A) impose conditions that are individual to a license when necessary
16 to protect public health and safety;

17 (B) reciprocate in the recognition of specific licenses issued by the
18 NRC or another state that has reached agreement with the NRC pursuant to
19 42 U.S.C. § 2021(b) (agreement state);

20 (C) require that licensees and unlicensed individuals comply with the
21 federal statutes and regulations relating to the authority assumed by the

1 Department under this section and with the rules adopted by the Department
2 under this section; and

3 (D) exempt certain byproduct, source, or special nuclear materials or
4 kinds of uses or users from the licensing or registration requirements set forth
5 in this section when the ~~agency~~ Department makes a finding that the
6 exemption of such materials or kinds of uses or users will not constitute a
7 significant risk to the health and safety of the public.

8 (3) The Department may collect a fee for licenses issued under this
9 section. The fee schedule for these licenses shall be the schedule adopted by
10 the U.S. Nuclear Regulatory Commission and published in 10 C.F.R. § 170.31
11 that is in effect as of the effective date of this section. Fees collected under this
12 section shall be credited to the Nuclear Regulatory Fund established and
13 managed under subdivision (4) of this subsection and shall be available to the
14 Department to offset the costs of providing services under this section.

15 (4) There is established the Nuclear Regulatory Fund to consist of the
16 fees collected under subdivision (3) of this subsection and any other monies
17 that may be appropriated to or deposited into the Fund. Balances in the
18 Nuclear Regulatory Fund shall be expended solely for the purposes set forth in
19 this section and shall not be used for the general obligations of government.
20 All balances in the Fund at the end of any fiscal year shall be carried forward
21 and remain part of the Fund, and interest earned by the Fund shall be deposited

1 in the Fund. The Nuclear Regulatory Fund is established in the State Treasury
2 pursuant to 32 V.S.A. chapter 7, subchapter 5.

3 ~~(3)~~(5) Any person having a license immediately before the effective date
4 of an agreement under subsection (a) of this section from the federal
5 government or agreement state relating to byproduct material, source material,
6 or special nuclear material and which on the effective date of this agreement is
7 subject to the control of this ~~state~~ State shall be considered to have a like
8 license with the ~~state~~ State of Vermont until the expiration date specified in the
9 license from the federal government or agreement state or until the end of the
10 ~~ninetieth~~ 90th day after the person receives notice from the ~~agency~~ Department
11 that the license will be considered expired.

12 ~~(4)~~(6) The ~~agency~~ Department shall require each person who possesses
13 or uses byproduct, source, or special nuclear materials to maintain records
14 relating to the receipt, storage, transfer, or disposal of such materials and such
15 other records as the ~~agency~~ Department may require subject to such
16 exemptions as may be provided by rule.

17 ~~(5)~~(7) Violations:

18 (A) ~~It shall be unlawful for any person to~~ A person shall not use,
19 manufacture, produce, transport, transfer, receive, acquire, own, or possess any
20 byproduct, source, or special nuclear material unless licensed by or registered

1 with the ~~agency~~ Department in accordance with the provisions of this chapter
2 or rules adopted under this chapter.

3 (B) The ~~agency~~ Department shall have the authority in the event of
4 an emergency to impound or order the impounding of byproduct, source, and
5 special nuclear materials in the possession of any person who is not equipped
6 to observe or fails to observe the provisions of this chapter or any rules ~~or~~
7 ~~regulations issued thereunder~~ adopted under this chapter.

8 ~~(6)(8)~~ The provisions of this section relating to the control of byproduct,
9 source, and special nuclear materials shall become effective on the effective
10 date of an agreement between the federal government and this ~~state~~ State as
11 provided in ~~section 1656 of this title~~ subsection (a) of this section.

12 (c) This section does not confer authority to regulate materials or activities
13 reserved to the NRC under 42 U.S.C. § 2021(c) and 10 C.F.R. Part 150.

14 § 1654. INSPECTION

15 The ~~agency~~ Department or its duly authorized representatives may enter at
16 all reasonable times upon any private or public property for the purpose of
17 determining whether or not there is compliance with or violation of this
18 chapter and rules and regulations issued thereunder, except that entry into areas
19 under the jurisdiction of the federal government shall be made only with the
20 concurrence of the federal government or its duly designated representative.

1 § 1655. HEARINGS AND JUDICIAL REVIEW

2 (a) In any proceeding under this chapter for the issuance or modification of
3 rules relating to control of byproducts, source, and special nuclear materials; or
4 for granting, suspending, revoking, or amending any license; or for
5 determining compliance with or granting exemptions from rules and
6 regulations of the ~~agency~~ Department, the ~~agency~~ Department shall hold a
7 public hearing upon the request of any person whose interest may be affected
8 by the proceeding, and shall admit any such person as a party to the
9 proceeding, subject to the emergency provisions in subsection (b) of this
10 section.

11 (b) Whenever the ~~agency~~ Department finds that an emergency exists
12 requiring immediate action to protect the public health and safety, the ~~agency~~
13 Department may, without notice or hearing, issue ~~a regulation or an order~~
14 reciting the existence of the emergency and requiring that such action be taken
15 as is necessary to meet it. Notwithstanding any ~~provisions~~ contrary provision
16 of this chapter, the ~~regulation or order~~ shall be effective immediately. Any
17 person to whom the ~~regulation or order~~ is directed shall comply ~~therewith~~ with
18 the order immediately, but on application to the ~~agency~~ Department shall be
19 afforded a hearing within ten days. On the basis of the hearing, the emergency
20 ~~regulation or order~~ shall be continued, modified, or revoked within ten days
21 after the hearing.

1 (c) Any final order entered in any proceeding under subsections (a) and (b)
2 ~~above of this section~~ shall be subject to judicial review in the ~~superior court~~
3 Civil Division of the Superior Court.

4 § 1656. INJUNCTION PROCEEDINGS

5 Whenever, in the judgment of the ~~agency~~ Department, any person has
6 engaged in or is about to engage in any acts or practices which constitute or
7 will constitute a violation of any provision of this chapter, or any rule issued
8 thereunder, the ~~attorney general~~ Attorney General shall make application to the
9 appropriate court for an order enjoining such acts or practices, or for an order
10 directing compliance, and upon a showing by the ~~agency~~ Department that such
11 person has engaged or is about to engage in any such acts or practices, a
12 permanent or temporary injunction, restraining order, or other order may be
13 granted.

14 * * *

15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on July 1, 2016.

17
18 and that after passage the title of the bill be amended to read: “An act relating
19 to enabling the Vermont Department of Health to reach an agreement with the
20 Nuclear Regulatory Commission regarding authority over regulation and
21 licensing of radioactive materials”

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE

DRAFT