

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: \_\_\_\_\_)

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Senator \_\_\_\_\_

FOR THE COMMITTEE

DRAFT