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H.758

Introduced by Representatives Burditt of West Rutland, Branagan of Georgia,  
Canfield of Fair Haven, Carr of Brandon, Cupoli of  
Rutland City, Dame of Essex, Eastman of Orwell, Fagan of  
Rutland City, Gage of Rutland City, Gamache of Swanton,  
Hubert of Milton, Krebs of South Hero, McFaun of  
Barre Town, Russell of Rutland City, Savage of Swanton, Shaw  
of Pittsford, Shaw of Derby, Tate of Mendon, Terenzini of  
Rutland Town, and Townsend of South Burlington

Referred to Committee on

Date:

Subject: Conservation and development; natural resources; land use; Act 250;  
party status; market competitors

Statement of purpose of bill as introduced: This bill proposes to require a  
market competitor to meet a high burden of proof to obtain party status in a  
proceeding under Act 250 (10 V.S.A. chapter 151).

An act relating to market competitors who seek party status under Act 250

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

2 Sec. 1. 10 V.S.A. § 6085 is amended to read:

3 § 6085. HEARINGS; PARTY STATUS

4 (a), (b) [Repealed.]

5 (c)(1) Party status. In proceedings before the District Commissions, the  
6 following persons shall be entitled to party status:

7 (A) the applicant;

8 (B) the landowner, if the applicant is not the landowner;

9 (C) the municipality in which the project site is located, and the  
10 municipal and regional planning commissions for that municipality; if the  
11 project site is located on a boundary, any Vermont municipality adjacent to  
12 that border and the municipal and regional planning commissions for that  
13 municipality; and the solid waste management district in which the land is  
14 located, if the development or subdivision constitutes a facility pursuant to  
15 subdivision 6602(10) of this title;

16 (D) any State agency affected by the proposed project;

17 (E) any adjoining property owner or other person who has a  
18 particularized interest protected by this chapter that may be affected by an act  
19 or decision by a District Commission.

20 (2) Content of petitions. All persons seeking to participate in  
21 proceedings before the District Commission as parties pursuant to

1 subdivision (c)(1)(E) of this section must petition for party status. Any  
2 petition for party status may be made orally or in writing to the District  
3 Commission. All petitions must include:

4 (A) A detailed statement of the petitioner's interest under the relevant  
5 criteria of the proceeding, including, if known, whether the petitioner's  
6 position is in support of or in opposition to the relief sought by the permit  
7 applicant, or petitioner.

8 (B) In the case of an organization, a description of the organization,  
9 its purposes, and the nature of its membership.

10 (C) A statement of the reasons the petitioner believes the District  
11 Commission should allow the petitioner party status in the pending proceeding.

12 (D) In the case of a person seeking party status under  
13 subdivision (c)(1)(E) of this section:

14 (i) If applicable, a description of the location of the petitioner's  
15 property in relation to the proposed project, including a map, if available;

16 (ii) A description of the potential effect of the proposed project  
17 upon the petitioner's interest with respect to each of the relevant criteria or  
18 subcriteria under which party status is being requested.

19 (3) Market competitors. In addition to all other applicable requirements  
20 of this subsection, a person who is a market competitor to a proposed  
21 development or subdivision shall not be granted party status under

1 subdivision (c)(1)(E) of this section unless the person provides clear and  
2 convincing evidence of the asserted effect on the person's interest under each  
3 criterion or subcriterion for which the person seeks party status. In this  
4 subdivision (3), "market competitor" means a person who provides a product  
5 or service that is similar to a product or service to be provided by the proposed  
6 development or subdivision, who owns or controls a legal or commercial entity  
7 that provides such a product or service, or who is a legal or commercial entity  
8 that is owned or controlled by a person who provides such a product or service.

9       (4) Timeliness. A petition for party status pursuant to subdivision  
10 (c)(1)(E) of this section must be made at or prior to an initial prehearing  
11 conference held pursuant to Board rule or at the commencement of the hearing,  
12 whichever shall occur first, unless the District Commission directs otherwise.  
13 The District Commission may grant an untimely petition if it finds that the  
14 petitioner has demonstrated good cause for failure to request party status in a  
15 timely fashion, and that the late appearance will not unfairly delay the  
16 proceedings or place an unfair burden on the parties.

17       ~~(4)~~(5) Conditions. Where a person has been granted party status  
18 pursuant to subdivision (c)(1)(E) of this section, the District Commission shall  
19 restrict the person's participation to only those issues in which the person has  
20 demonstrated an interest, and may encourage the person to join with other

1 persons with respect to representation, presentation of evidence, or other  
2 matters in the interest of promoting judicial efficiency.

3 ~~(5)~~(6) Friends of the Commission. The District Commission, on its own  
4 motion or by petition, may allow nonparties to participate in any of its  
5 proceedings, without being accorded party status. Participation may be limited  
6 to the filing of memoranda, proposed findings of fact and conclusions of law,  
7 and argument on legal issues. However, if approved by the District  
8 Commission, participation may be expanded to include the provision of  
9 testimony, the filing of evidence, or the cross examination of witnesses. A  
10 petition for leave to participate as a friend of the Commission shall identify the  
11 interest of the petitioner and the desired scope of participation and shall state  
12 the reasons why the participation of the petitioner will be beneficial to the  
13 District Commission. Except where all parties consent or as otherwise ordered  
14 by the District Commission or by the Chair of the District Commission, all  
15 friends of the Commission shall file their memoranda, testimony, or evidence  
16 within the times allowed the parties.

17 ~~(6)~~(7) Reexamination of party status. A District Commission shall  
18 reexamine party status determinations before the close of hearings and state the  
19 results of that reexamination in the District Commission decision. In the  
20 reexamination of party status coming before the close of District Commission  
21 hearings, persons having attained party status up to that point in the

1 proceedings shall be presumed to retain party status. However, on motion of a  
2 party, or on its own motion, a Commission shall consider the extent to which  
3 parties continue to qualify for party status. Determinations made before the  
4 close of District Commission hearings shall supersede any preliminary  
5 determinations of party status.

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7 Sec. 2. EFFECTIVE DATE

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