

House File 2580

H-8225

1 Amend House File 2580 as follows:

2 1. Page 9, after line 24 by inserting:

3 <16. a. Notwithstanding any other provision of this
4 chapter or any other provision of law to the contrary, on and
5 after July 1, 2026, a person shall not commence or cause to be
6 commenced the construction of a wind energy conversion facility
7 or any wind turbine that is part of a wind energy conversion
8 facility in this state unless the indemnification and hold
9 harmless agreements required by this subsection have been fully
10 executed, recorded, and delivered as provided herein.

11 b. The following persons shall each be required to execute
12 the indemnification and hold harmless agreement required by
13 this subsection as joint and several obligors:

14 (1) The promoter of the wind energy conversion facility,
15 meaning any person who has solicited or obtained, or caused to
16 be solicited or obtained, any easement, lease, option, or other
17 property interest for the purpose of siting, constructing, or
18 operating any wind turbine at the proposed site.

19 (2) The developer of the wind energy conversion facility,
20 meaning any person responsible for planning, financing,
21 permitting, or managing the construction of the facility or any
22 turbine therein.

23 (3) The manufacturer of each wind turbine to be constructed
24 at the proposed site, including any successor, assignee, or
25 affiliate of such manufacturer.

26 (4) The proposed owner of each wind turbine to be
27 constructed at the proposed site and any person who will hold
28 a direct or indirect ownership interest in such turbine upon
29 completion of construction.

30 (5) Each grantor of any easement, lease, license, or other
31 property interest on which any wind turbine is proposed to
32 be sited, meaning the owner or owners of the real property
33 on which the turbine foundation, tower, or any associated
34 infrastructure is to be physically located.

35 c. The indemnification and hold harmless agreement shall

1 be executed in favor of, and shall be enforceable by, each and
2 every landowner of record of any parcel of real property, any
3 part of which is located within a three-mile radius of the
4 proposed location of any wind turbine to be constructed as
5 part of the facility. For purposes of this subsection, the
6 three-mile radius shall be measured from the center of the
7 proposed turbine foundation to the nearest boundary of each
8 such parcel.

9 *d.* The indemnification and hold harmless agreement shall
10 provide that the obligors identified in paragraph "b" shall,
11 jointly and severally, defend, indemnify, and hold harmless
12 each beneficiary identified in paragraph "c" from and against
13 any and all claims, demands, actions, causes of action,
14 damages, losses, costs, expenses, liabilities, judgments,
15 liens, and encumbrances, including but not limited to
16 reasonable attorney fees, expert witness fees, and all costs of
17 investigation, litigation, arbitration, mediation, appeal, and
18 collection, arising from, related to, or in any way connected
19 with the construction, presence, operation, maintenance,
20 repair, repowering, modification, or decommissioning of the
21 wind turbine or any component, appurtenance, or infrastructure
22 thereof at the proposed site, including but not limited to all
23 of the following:

24 (1) Personal injury, bodily injury, emotional distress, or
25 death.

26 (2) Damage to or destruction of real or personal property.

27 (3) Contamination of soil, water, crops, forage, livestock,
28 or any agricultural product by fiberglass particles,
29 microplastics, bisphenol A, epoxy resin compounds, polyurethane
30 compounds, lubricants, hydraulic fluids, or any other substance
31 or material originating from or associated with the wind
32 turbine or its components.

33 (4) Diminution in the fair market value or rental value of
34 real property.

35 (5) Loss of agricultural productivity, crop yield, crop

1 quality, or crop marketability.

2 (6) Loss of livestock health, productivity, or
3 marketability.

4 (7) Loss of organic certification, specialty crop
5 certification, or any other agricultural certification or
6 designation.

7 (8) Interference with or damage to agricultural drainage
8 tile, surface drainage infrastructure, irrigation systems, or
9 soil structure, including soil compaction.

10 (9) Interference with aerial application of agricultural
11 chemicals, fertilizers, or seed.

12 (10) Interference with the use and enjoyment of real
13 property, including noise, shadow flicker, light emission,
14 visual impact, electromagnetic interference, interference with
15 a global positioning system or precision agriculture system,
16 or vibration.

17 (11) Ice throw, blade throw, blade failure, tower collapse,
18 fire, explosion, or any other structural or mechanical failure.

19 (12) Damage to public or private roads, bridges, culverts,
20 or other transportation infrastructure attributable to the
21 construction, maintenance, or decommissioning of the facility.

22 (13) Environmental contamination, remediation costs, or
23 natural resource damage assessed or incurred under any federal,
24 state, or local environmental law or regulation.

25 (14) Any other loss, damage, cost, or casualty of any kind
26 whatsoever that arises from or is related to the construction,
27 presence, operation, maintenance, repair, repowering,
28 modification, or decommissioning of the wind turbine or any
29 component, appurtenance, or infrastructure thereof.

30 e. The indemnification and hold harmless obligation created
31 under this subsection shall commence upon the date of execution
32 of the agreement and shall continue in full force and effect
33 for as long as the wind turbine, or any part of its foundation,
34 tower, nacelle, blades, underground infrastructure, or other
35 physical construction, remains physically present at the site,

1 and for a period of ten years following the date on which
2 the last such physical component has been completely removed
3 from the site and the site has been restored in accordance
4 with any applicable decommissioning plan. For purposes of
5 this paragraph, the severance or abandonment of underground
6 infrastructure, including but not limited to foundations,
7 cables, and conduits, at any depth shall not constitute
8 removal, and the indemnification obligation shall continue
9 until all such infrastructure has been physically extracted
10 from the ground.

11 *f.* The indemnification and hold harmless obligation created
12 under this subsection shall run with the land on which the wind
13 turbine is sited and shall be binding upon each obligor and
14 upon each obligor's successors, assigns, heirs, transferees,
15 and any person or entity that acquires any ownership interest
16 in the wind turbine, the facility, or the real property
17 on which the turbine is sited, by any means whatsoever,
18 including but not limited to sale, merger, acquisition,
19 foreclosure, bankruptcy, receivership, tax sale, or operation
20 of law. No transfer, assignment, conveyance, or change of
21 ownership or control of the wind turbine, the facility, or the
22 underlying real property shall release, diminish, or impair the
23 indemnification obligation of any obligor.

24 *g.* The indemnification and hold harmless agreement shall
25 be recorded in the office of the county recorder of each
26 county in which any beneficiary's property is located, at the
27 expense of the obligors, no later than thirty days prior to the
28 commencement of any construction activity at the site. The
29 agreement shall include a legal description of each parcel
30 of real property subject to the agreement, both as to the
31 obligor grantors and as to the beneficiary landowners, and
32 shall contain a map clearly depicting the three-mile radius
33 from each proposed turbine location. A certified copy of the
34 recorded agreement shall be delivered by the obligors to each
35 beneficiary by certified mail, return receipt requested, no

1 later than fifteen days following recording.

2 *h.* The recorded indemnification and hold harmless agreement
3 shall constitute constructive notice to all subsequent
4 purchasers, mortgagees, lienholders, and other persons
5 acquiring any interest in the real property on which the
6 wind turbine is sited. The obligors shall ensure that any
7 contract for the sale, transfer, or conveyance of the wind
8 turbine, the facility, or the underlying real property contains
9 a provision requiring the purchaser or transferee to assume
10 all indemnification obligations under this subsection and to
11 execute a supplemental indemnification agreement in favor of
12 all then-current beneficiaries within thirty days of closing.

13 *i.* The indemnification and hold harmless obligations under
14 this subsection may not be waived, released, or modified by any
15 beneficiary except by an instrument in writing, signed by the
16 beneficiary, acknowledged before a notary public, and recorded
17 in the office of the county recorder. No easement, lease,
18 option, or other agreement between a landowner and any obligor
19 shall be construed to waive or modify the indemnification
20 obligations of this subsection unless the instrument of waiver
21 expressly references this subsection by statutory citation and
22 contains a conspicuous statement, in boldface type of not less
23 than fourteen-point font, that the landowner is waiving the
24 protections of this subsection.

25 *j.* Each obligor shall maintain, at all times during
26 which the indemnification obligation is in effect, a policy
27 of general liability insurance or environmental liability
28 insurance, or both, with limits of not less than ten million
29 dollars per occurrence and twenty-five million dollars in
30 the aggregate, sufficient to satisfy the indemnification
31 obligations of this subsection. Proof of such insurance shall
32 be filed with the county auditor annually. The policy shall
33 name all beneficiaries as additional insureds and shall provide
34 not less than sixty days' written notice to the county auditor
35 and all beneficiaries prior to cancellation, nonrenewal, or

1 material modification.

2 *k.* Any beneficiary may enforce the indemnification and
3 hold harmless agreement by action in the district court of
4 the county in which the beneficiary's property is located.
5 The prevailing party in any such action shall be entitled to
6 recover all reasonable attorney fees, expert witness fees,
7 and costs of litigation. The obligors shall not assert as a
8 defense the failure of a beneficiary to provide notice of a
9 claim within any particular period, provided that the action is
10 commenced within the applicable statute of limitations. The
11 statute of limitations for any action under this subsection
12 shall be ten years from the date the beneficiary knew or
13 reasonably should have known of the loss, damage, or casualty
14 giving rise to the claim, or ten years from the date of removal
15 of the last physical component of the wind turbine from the
16 site, whichever is later.

17 *l.* The liability of the obligors under the indemnification
18 and hold harmless agreement shall be joint and several. A
19 beneficiary may pursue any one or more obligors for the full
20 amount of any claim without being required to join, notify, or
21 first proceed against any other obligor. Contribution among
22 obligors shall be governed by chapter 668.

23 *m.* The indemnification and hold harmless obligations
24 created by this subsection are in addition to, and not in lieu
25 of, any other remedy available to any beneficiary under any
26 other provision of law, including but not limited to common
27 law negligence, nuisance, trespass, strict liability, or any
28 statutory cause of action. Nothing in this subsection shall be
29 construed to limit, impair, or preclude any claim or cause of
30 action that a beneficiary may have against any obligor or any
31 other person under any other provision of law.

32 *n.* For purposes of this subsection:

33 (1) "*Construction*" includes any grading, excavation,
34 foundation work, road construction, crane assembly, tower
35 erection, turbine installation, electrical interconnection,

1 or other physical activity undertaken in preparation for or
2 in furtherance of the installation of a wind turbine at the
3 proposed site.

4 (2) "*Landowner of record*" means any person or entity holding
5 legal or equitable title to real property as reflected in the
6 records of the county recorder's office, including but not
7 limited to individuals, trusts, corporations, limited liability
8 companies, partnerships, and governmental entities.

9 (3) "*Loss*" or "*casualty*" includes any injury, damage,
10 harm, cost, expense, liability, or deprivation of any kind,
11 whether economic or noneconomic, direct or consequential, past,
12 present, or future, and whether or not foreseeable at the time
13 of execution of the indemnification agreement.

14 o. If any provision of this subsection or its application to
15 any person or circumstance is held invalid, the invalidity does
16 not affect other provisions or applications of this subsection
17 that can be given effect without the invalid provision or
18 application, and to this end the provisions of this subsection
19 are severable.

20 p. This subsection shall apply to all wind energy conversion
21 facilities and wind turbines for which construction commences
22 on or after July 1, 2026, regardless of when any permit,
23 approval, easement, lease, or other authorization for the
24 facility or turbine was granted or executed.>

25 2. By renumbering, redesignating, and correcting internal
26 references as necessary.

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