



January 27, 2023

Chairman Patten and Senate Energy and Natural Resources Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in opposition of Senate Bill 2228. The Lignite Energy Council consists of over 250 members representing lignite mines, electric utilities, independent power producers and contractor suppliers in the Upper Midwest. The lignite industry accounts for over 13,000 direct and indirect jobs, over \$5.4 billion in economic development and millions in state, county and local tax revenue.

For the past two decades, the Lignite Energy Council has worked with the legislature, state agencies and stakeholders to create a legal, tax, and regulatory framework to support development of carbon capture technology for the electric power that would position North Dakota to lead the nation in CO2 development. There is a long list of legislation that has been thoughtfully designed, debated and passed into law that includes conformity with federal laws, the fee structure at the North Dakota Industrial Commission, the long-term accountability for CO2 storage, Class VI primacy for pore space and the critically important state investments into research, and development to name a few policies that our industry has helped place into law.

We are pursuing this technology because it has the potential to create another top five industry in North Dakota, and to preserve and enhance the coal industry in the new carbon economy. We have pursued this path because ever tightening federal regulations around carbon emissions threaten the longevity of the lignite industry and we now have a tremendous opportunity to mitigate that risk. In North Dakota, we are blessed not only with an 800 year supply of our lignite natural resources, but we also have some of the best geology in the whole world for the underground storage of carbon emissions. This combination provides the tremendous opportunity to lower our carbon emissions while providing us with economic and regulatory certainty in the future that we will be able to continue to deliver affordable and reliable energy to the citizens of our state.

The language found in SB2228 creates additional risk for all potential future carbon capture projects and the economic growth they will bring. LEC submitted previous testimony laying out the historical timeline of North Dakota's work to incentivize and deploy new technologies in the energy sector. The incentives crafted over the past 20 years worked; they drew interest, capital and growth to our state while providing a pathway to the future for our industry. One of the differences between this great nation and others has been the certainty we offer to businesses. A quicksand industrial foundation obviously decreases confidence from investors and business owners, and when a state creates a business climate that attracts wealth and capital, and then changes the rules at halftime, the signal is sent to just not participate. This change is so dramatic it will simply end an industry—an industry that will produce jobs and opportunity while giving the lignite industry a lifeline to exist far into the future. And the manner in which this bill operates—by constraining the rights of private property owners to add their own labor and capital to property in order to create more wealth—is itself a violation of the principles of property rights that are the subject of concern.

This bill in particular jeopardizes the ability of private individuals to turn their property into wealth by requiring the consent of their neighbors in order to use their own property without restrictions. Frederic Bastiat once wrote that we don't own property because the laws allow it, but instead we have laws because we own property. The legislature has

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long taken the only equitable approach when property owners desires are incompatible with each other, which is to require more than a majority threshold. This bill also creates a unique opportunity for small groups or individuals to purchase property just to disrupt energy projects. This is not a “scare tactic”. Environmental groups in Idaho have purchased grazing rights to prevent cattle grazing. Another purchased oil and gas rights in Wyoming to prevent oil development. Another activist bought leases in Southern Utah. All with the aim of thwarting development. This bill would hand them a tool not just to derail a growing CO2 industry that can add billions of dollars and thousands of jobs to our economy, but will also be used by groups to end the lignite industry’s ability to continue to supply the region with electricity, handing radical green groups a victory under the policies of a state with 800 years of coal and generations of oil and gas underfoot.

We believe that the laws that have been carefully crafted in the Century Code should not be repealed or changed before they have the opportunity to work—or, in this case simply because they work, simply because they are attracting projects. We are proud of the community relations that our power plants and mines have built over the many decades that our industry has been in operation. Strong landowner relationships are the only way that these projects move forward and we have achieved high levels of landowner support while coexisting with the current amalgamation laws. The future of our economy depends on moving the commodities we produce to market through critical infrastructure. The CO2 economy will provide public goods through the reduction of regulatory risk for the energy industry, the development of value added products made from CO2 and the ability to supply CO2 for enhanced oil recovery to continue the petroleum production that provides over 50% of our state’s tax revenues.

For these reasons, the Lignite Energy Council opposes SB2228 and we respectfully ask that the committee move to give this legislation a “Do Not Pass” recommendation.

Thank you for your consideration,

Jason Bohrer
President and CEO

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