Analysis of HF 368 to Increase Regulatory Hurdles on Carbon Capture and Sequestration Projects

IRFA Position

1. Iowans should unite to find a fair and equitable path forward for carbon capture and sequestration (CCS) projects – fair and equitable to landowners, CCS projects and communities.

2. Any changes to Iowa Utilities Board (IUB) permitting process should apply to all applicants, not just CO2 pipelines.

3. Any changes should not apply to projects that have already filed with the IUB. Projects have spent literally hundreds of millions of dollars in good faith under Iowa law. To change the rules midway through the process is unfair and quite possibly illegal.

HF 368 Overview

This bill fails all criteria set forth by IRFA. The bill would single out pipelines transporting a nonexplosive, nonflammable gas for much more stringent requirements. It would create a de facto ban on CCS projects, putting the future on Iowa ethanol production at a severe disadvantage.

This bill is the literal wish list of anti-ag, anti-ethanol, anti-internal combustion engine extremist groups like Sierra Club. While claiming to be a "property rights" bill, nothing could be further from the truth as it limits changes to solely CO2 sequestration projects. Rather, the bill would create a Big Government web of unnecessary and overreaching regulations with the effect of undercutting Iowa agriculture and the ability of liquid fuels like ethanol to compete with electric vehicles.

HF 368 Details

All Sections: This bill specifically and continuously applies new burdensome requirements to ONLY CO2 pipeline projects.

Fact: Any claim that this bill is about "property rights" rings completely hollow. Rather, it singles out CCS projects for unique and unreasonable restrictions. The bill does not address any of the generic concerns that have been raised about the current IUB permitting process.

Section 2: This section would prevent CCS projects from moving forward until the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) adopted additional safety standards for CO2 pipelines.

Fact: PHMSA already has safety standards in place for CO2 pipelines. Like many federal regulations, they are constantly under review and updated. It is vital to note that under PHMSA regulations, any new safety standards that might be adopted in the future will apply to ALL CO2 pipelines – there is no grandfathering of existing projects or pipelines.

In short, this section would freeze projects for an indefinite period of time at the whims of a federal agency while not providing a single safety benefit to Iowans. This is an example of government at its worst.

Section 3: This section would prevent the Iowa Utilities Board (IUB) from granting a permit to a CO2 pipeline unless it is in compliance with all county, municipal, and local zoning ordinances and permits.

Fact: This is simply a de facto ban on CO2 pipelines. It would authorize new levels of government to regulate CO2 pipelines. We have already seen counties attempt to adopt zoning that is physically impossible to comply with.

This provision would allow only two Iowans to kill a CO2 project even if the project acquired 100% voluntary easements from landowners. Two members of a three-member county board of supervisions could vote to enact an uncompilable zoning standard. It is simply ridiculous to empower two Iowans in this manner on projects of statewide importance.

This would also be a new and potentially seismic shift in how Iowa permits statewide projects. In the past, Iowa in general, and Iowa Republicans in particular, have supported statewide standards for projects and industries that compete throughout the state. Examples would be the master matrix for livestock, IUB for infrastructure projects, and Iowa Dept. of Education for statewide education standards. This bill would strike a major departure from this principal and unleash a hodgepodge of country, municipal, and local regulations and ordinances – any one of which could kill the entire interstate project.

Section 5: This provision would require a CO2 pipeline project to acquire 90% of the needed route (in miles) by voluntary easement before eminent domain could be authorized.

Fact: This is a de facto ban on CO2 pipeline projects. By requiring a project to obtain 90% voluntary easements, it empowers a small number of people to veto a project – even if it has supermajority support. Knowing that they will never be asked to find a reasonable settlement, rouge landowners can rebuff a project without even engaging in meaningful dialog. In is important to note that this would not apply to other projects using eminent domain, such as oil pipelines, solar farms, electricity transmission, or explosive and flammable liquids and gases.

Further, future CCS projects by ethanol producers or other industries would be at particular risk, as short feeder pipelines (leading from the new projects to existing CO2 pipelines) could be left at the mercy of literally one landowner.

Section 5: This section would also prevent IUB from permitting an interstate project until it had been permitted by all other states where the project will have a footprint.

Fact: This provision would unnecessarily delay vital Iowa projects by leaving them to the timelines of other states. For example, a CO2 project may have a relatively large footprint in Iowa and a relatively minor footprint in Missouri. What benefit is there in

empowering Missouri to “veto” or delay the entire project? Isn’t a good law, one that we would want other states to admire and adopt? If other states adopted this provision it would create a Catch-22 whereby nothing could ever be done. IUB permits are currently issued contingent on a project acquiring all permits for the entire project. So the change here is subtle, but potentially deadly to projects.

Section 11: This section applies the new CCS regulations to all permits filed with the IUB on or after July 1, 2021. This would be applicable to the three projects with permits pending before the IUB.

Fact: This provision is both unfair and likely illegal. CCS projects in Iowa have been working in good faith under the laws and regulations of Iowa, spending literally hundreds of millions of dollars. To change the rules at this point risks Iowa’s reputation as “open for business.”