

Sixty-first
Legislative Assembly
of North Dakota

SENATE CONCURRENT RESOLUTION NO.

Introduced by

Senator Krauter

1 A concurrent resolution urging Congress and the President of the United States to enact federal
2 legislation to create protections for railroad shippers, particularly those in areas without effective
3 rail-to-rail competition.

4 **WHEREAS**, lack of access to effective rail service competition is a major consumer
5 welfare concern; and

6 **WHEREAS**, in the United States, massive industry consolidation has left four major
7 railroads controlling more than 90 percent of the industry's revenue and over 90 percent of the
8 country's track miles; and

9 **WHEREAS**, the lack of effective railroad competition and regulatory protection remedies
10 has led to an increase in the number of captive shippers, rising rail rates, and a deterioration in
11 service quality; and

12 **WHEREAS**, for many agricultural and other essential bulk commodity products in North
13 Dakota, it is not feasible to ship by any means other than rail, leaving some of the shippers of
14 these products, and their consumers, captive to a single railroad; and

15 **WHEREAS**, the railroads' demonstration of unrestrained market power has also been
16 visibly evident in the energy sector with rate increases that could as much as quadruple the
17 rates paid by electricity consumers; and

18 **WHEREAS**, the refusal of railroads to provide shippers with a quoted rate to move
19 freight over essential bottleneck rail facilities makes a customer captive to a single rail carrier
20 for the entire length of the freight movement; and

21 **WHEREAS**, the Railroad Competition and Service Improvement Act of 2007 required a
22 major railroad to provide the rate subject to a rate reasonableness challenge for moving its
23 customers' freight to that competing railroad; and

1 **WHEREAS**, tie-in agreements between short line railroads and major railroads prevent
2 the short line from moving freight to or from any railroad other than the major railroad from
3 which it is leasing its track; and

4 **WHEREAS**, the Railroad Competition and Service Improvement Act of 2007 directed
5 the removal of any such unreasonable restrictions from existing agreements; and

6 **WHEREAS**, the Department of Justice has indicated to Congress that the failure to
7 provide a rate to a competing railroad and "tie-in" agreements could be a violation of the
8 Sherman Antitrust Act; and

9 **WHEREAS**, the federal Surface Transportation Board has the clear statutory authority
10 to afford rail access and rate reasonableness relief for shippers as established by Congress in
11 the Staggers Rail Act of 1980, but in practice, its regulations and policies have largely
12 precluded most shippers from obtaining any meaningful relief under these provisions; and

13 **WHEREAS**, federal legislation can address the anticompetitive rulings of the Surface
14 Transportation Board that have allowed the major railroads to prevent rail customer access to
15 competition and reasonable rates and service terms, and begin to restore balance between the
16 interests of the railroads and the interest of rail customers;

17 **NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE**
18 **HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

19 That the Sixty-first Legislative Assembly urges the Congress of the United States and
20 the President to enact federal legislation to create protections for railroad shippers, particularly
21 those in areas without effective rail-to-rail competition; and

22 **BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this
23 resolution to the President of the United States, each member of the Surface Transportation
24 Board, and each member of the North Dakota Congressional Delegation.