

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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SENATE JOINT RESOLUTION 40

Sponsors: Senators Hise, Krawiec, and Rabin (Primary Sponsors).

Referred to: Rules and Operations of the Senate

February 8, 2017

1 A JOINT RESOLUTION RELATING TO THE DUTIES OF DELEGATES SELECTED BY
2 THE LEGISLATURE TO ATTEND A CONVENTION OF THE STATES CALLED
3 UNDER ARTICLE V OF THE CONSTITUTION OF THE UNITED STATES TO
4 CONSIDER A COUNTERMAND AMENDMENT TO THE CONSTITUTION OF THE
5 UNITED STATES; ESTABLISHING AS A JOINT COMMITTEE OF THE LEGISLATURE
6 THE DELEGATE CREDENTIAL COMMITTEE AND RELATING TO THE DUTIES OF
7 THE COMMITTEE; PROVIDING FOR AN OATH FOR DELEGATES AND
8 ALTERNATES TO A COUNTERMAND AMENDMENT CONVENTION; PROVIDING
9 FOR A CHAIR AND ASSISTANT CHAIR OF THE STATE'S COUNTERMAND
10 AMENDMENT DELEGATION; PROVIDING FOR THE DUTIES OF THE CHAIR AND
11 ASSISTANT CHAIR; PROVIDING INSTRUCTIONS FOR THE SELECTION OF A
12 CONVENTION PRESIDENT; AND PROVIDING SPECIFIC LANGUAGE FOR THE
13 COUNTERMAND AMENDMENT ON WHICH THE STATE'S CONVENTION
14 DELEGATES ARE AUTHORIZED BY THE LEGISLATURE TO VOTE TO APPROVE.

15 Whereas, under the authority of Article V of the Constitution of the United States, the
16 North Carolina General Assembly has applied to the United States Congress to call a convention
17 of the states to amend the Constitution of the United States and adopt a countermand amendment
18 to authorize the states, upon a vote of three-fifths of the state legislatures, to nullify and repeal a
19 federal statute, executive order, judicial decision, regulatory decision by a federal government
20 agency, or government mandate imposed on the states by law that adversely affects the interests of
21 the states, in order to properly exercise the states' constitutional authority to check federal power,
22 preserve state sovereignty, and protect the rights of the states and the people; and

23 Whereas, to prepare for approval by the United States Congress of a constitutional
24 countermand amendment convention called by two-thirds of the states under Article V of the
25 Constitution of the United States, for the limited purpose of amending the Constitution of the
26 United States to include a countermand amendment, the General Assembly finds it necessary to
27 provide for a selection process for and the duties of delegates and alternates to the convention, to
28 provide for a state convention delegation chair, and to provide the specific language of the
29 countermand amendment on which the legislature authorizes the convention delegates to vote, so
30 that the countermand amendment may be sent to the states for ratification by the legislatures of
31 two-thirds of the several states; and

32 Whereas, the delegates sent by the legislature to the countermand amendment
33 convention are representatives of the legislature and are thus required to fulfill the commission
34 assigned to them in this resolution; delegates appointed under this resolution are not free agents;
35 they are authorized only to complete the terms and conditions defined in this resolution, and any
36 actions by the delegates appointed under this resolution that are not authorized in the resolution, or
37 as amended and authorized by the legislature, are ultra vires and may not be relied on by delegates
38 from other states or by the convention; and



1 Whereas, the legislature hereby defines the duties and limits the authority of its
2 delegates to the convention as specifically provided by this resolution; Now, therefore,
3 Be it resolved by the Senate, the House of Representatives concurring:

4 **SECTION 1.** The legislature authorizes delegates to be summoned and appointed to
5 participate at the convened convention according to the terms and conditions set out in this
6 resolution.

7 **SECTION 2.** The number and qualifications of delegates to be sent to the convened
8 convention will be decided by the General Assembly after the United States Congress summons
9 delegates to the convention.

10 **SECTION 3.** The General Assembly may add to the number of delegates or replace or
11 remove any delegate or alternate if, in its sole discretion, that action is necessary; alternates do not
12 have an official role at the convention and may attend the convention only if the state delegations
13 at the convention vote to allow their attendance or the legislature appoints an alternate to take the
14 place of a delegate.

15 **SECTION 4.** The General Assembly hereby instructs and authorizes the State's
16 delegates to the convention to vote to send the countermand amendment, as set forth in Section 16
17 of this resolution, back to the states for ratification by way of the United States Congress;
18 delegates are prohibited to vote in favor of any alternate amendment or modified version of the
19 countermand amendment that might be introduced at the convention, and they are hereby
20 instructed to do all in their power at the convention to secure a vote that approves sending the
21 countermand amendment back to the states for ratification.

22 **SECTION 5.** Only the countermand amendment, as set forth in Section 16 of this
23 resolution, shall be considered by the legislature for ratification.

24 **SECTION 6.** Upon the enactment of this resolution and after a total of 34 states place
25 a call under Article V of the Constitution of the United States for a countermand convention, the
26 Speaker of the House of Representatives shall appoint three members of the House of
27 Representatives, with one member being from the minority caucus, and the President of the Senate
28 shall appoint three members of the Senate, with one member being from the minority caucus, to a
29 legislative Delegate Credential Committee. The committee shall have the responsibility and
30 requisite authority to perform each of its assigned duties described in Section 11 of this resolution.

31 **SECTION 7.** A vacancy on the Delegate Credential Committee shall be filled in the
32 manner of the original appointment.

33 **SECTION 8.** Members of the House of Representatives on the Delegate Credential
34 Committee shall select one cochair from among their number, and the Senators on the Delegate
35 Credential Committee shall select one cochair from among their number; and the cochairs may
36 assign staff to provide support for the Delegate Credential Committee.

37 **SECTION 9.** The Delegate Credential Committee may meet during and between
38 legislative sessions.

39 **SECTION 10.** Members of the Delegate Credential Committee can be replaced or
40 removed by the presiding officer appointing them, if, in the sole discretion of the presiding officer,
41 that action is necessary; each member of the committee is required to take the following oath,
42 administered by the presiding officer of the House of Representatives or Senate, and sign a pledge
43 confirming that the following oath has been taken and agreed to: "I pledge to follow the
44 instructions and charges in this resolution and any other directives given to me by the North
45 Carolina General Assembly from the date I am appointed to the committee and during the full
46 term of the convention, to the best of my abilities, so help me God."

47 **SECTION 11.** The members of the Delegate Credential Committee shall follow the
48 directives in this resolution and any supplemental instructions from the General Assembly. The
49 Committee shall have all of the following duties:

- 50 (1) To decide all matters among committee members by a vote of a majority of the
51 full membership of the committee.

- 1 (2) To function as the official facilitator for the legislature as required in this
2 resolution.
- 3 (3) To appoint delegates, subject to approval by the General Assembly, to the
4 convention and, within 10 business days after appointment, provide a
5 committee report of the appointment to the House chief clerk and Senate
6 secretary.
- 7 (4) To appoint one delegate to serve as the chair of North Carolina's State
8 delegation and another delegate as the assistant chair.
- 9 (5) To issue to each approved delegate and alternate, including the chair and
10 assistant chair, certification that the delegate has satisfactorily done all of the
11 following:
- 12 a. Met the requisite qualifications established by the General Assembly.
13 b. Taken the applicable oath set forth in subdivision (8) of this section.
14 c. Confirmed the delegate's oath by signing a separate pledge document.
- 15 (6) To issue to each certified delegate and alternate, including the chair and
16 assistant chair, a convention pass to the convention.
- 17 (7) To notify the legislature of the financial or other needs of North Carolina's State
18 delegation at the convention.
- 19 (8) To administer the following oaths to the delegates, alternate candidates, chair,
20 or assistant chair before issuing certifications:
21

22 DELEGATES' AND DELEGATE ALTERNATES' OATHS

23 "I pledge to follow the instructions in this delegate resolution and any other directive consistent
24 with this delegate resolution given to me by the Delegate Credential Committee or the legislature,
25 whether such directive is given to me directly or indirectly, from the time I am certified by the
26 committee to be a delegate or alternate and during the full term of the countermand amendment
27 convention, to the best of my abilities, so help me God."
28

29 CHAIR AND ASSISTANT CHAIR OF NORTH CAROLINA'S STATE DELEGATION OATHS

30 "I pledge to follow the instructions in this delegate resolution and any other directive consistent
31 with this delegate resolution given to me by the Delegate Credential Committee or the legislature,
32 whether given to me directly or indirectly, from the time I am certified by the committee to be the
33 chair or assistant chair of North Carolina's State delegation and during the full term of the
34 countermand amendment convention, to the best of my abilities, so help me God."
35

- 36 (9) To monitor the activities of North Carolina's State delegation.
- 37 (10) To keep close communications with the chair and assistant chair and provide
38 needed assistance when requested.
- 39 (11) To monitor the activities, deliberations, and all votes by the states at the
40 convention, and, when possible, to inform the chair, assistant chair, and
41 legislature of which states at the convention have enacted a similar resolution
42 for their delegates.
- 43 (12) To make reports, at least quarterly or more frequently if necessary, to the
44 General Assembly regarding the events at the convention, upcoming events,
45 and progress and prospects for ratification of the countermand amendment by
46 the delegations; and to make appropriate recommendations to the legislature on
47 actions needed to ensure the favorable vote by the state delegations to send the
48 countermand amendment, as set forth in Section 16 of this resolution, to the
49 states, by way of the United States Congress, for ratification.
- 50 (13) To recommend to the legislature removal of a delegate or alternate from all
51 convention activities for a violation of the provisions of this resolution and to

1 make recommendations regarding whether the delegate should have the
2 delegate's credentials invalidated; the committee's recommendation must be
3 approved by the General Assembly.

4 **SECTION 12.** The chair and assistant chair of North Carolina's State delegation shall
5 be required to follow the directives in this resolution and others that may be issued by the
6 legislature.

7 **SECTION 13.** The chair of North Carolina's State delegation is charged with joining
8 with other state delegations to open the convention for business, identifying other state legislatures
9 that have approved a delegate resolution for their delegates, and working with those delegations to
10 find agreement to each of the following:

- 11 (1) To arrange to have at least one delegate from each resolution delegation be the
12 spokesman at every business meeting and roll call at the convention; unless
13 otherwise specified, the chair will be the state delegation's spokesman.
- 14 (2) To distribute to all delegates a pocket-sized copy of the Constitution of the
15 United States.
- 16 (3) To instruct resolution and nonresolution state delegates of the mandate in
17 Section 4 of Article IV of the Constitution of the United States that guarantees
18 to each state a republican form of government, which gives each state equal
19 standing when applying for a convention and when voting at and organizing the
20 convention.
- 21 (4) To work closely with the chairs of all other state delegations to find mutual
22 agreement on the objectives in this resolution.
- 23 (5) To assign to North Carolina's delegates the following duties: assign to each
24 delegate a proportionate number of delegates from other state delegations for
25 the purpose of gaining consensus and agreement that the countermand
26 amendment, as herein written, should be sent to the states for ratification.
- 27 (6) To build a consensus between at least 26 state delegations, especially resolution
28 delegations, at the convention to do the following:
 - 29 a. To require that each state delegation at the convention has only one vote
30 regardless of the number of delegates in a state delegation or the
31 population of a state as provided by Section 4 of Article IV of the
32 Constitution of the United States.
 - 33 b. To require a simple majority vote at all roll calls to decide any and all
34 matters brought before the convention, including the question of
35 whether the countermand amendment, as herein written, should be sent
36 to the states for ratification.
 - 37 c. To nominate and install convention officials who come from states that
38 have passed this resolution for their delegates and who agree with
39 sending the countermand amendment, as herein written, to the states for
40 ratification.
 - 41 d. To require a quorum of 26 state delegations before business can be
42 conducted and before a vote can be taken to decide any and all matters
43 that may be presented at the convention.
 - 44 e. To build a consensus of at least 26 state delegations to work together for
45 the mutual goal of sending the countermand amendment, as set forth in
46 Section 16 of this resolution, back to the states for ratification.
 - 47 f. To work to conclude convention business in 21 days; in no case is the
48 convention to be longer than 180 days, unless the convention votes to
49 extend the termination date by 180 days; no further extensions are to be
50 allowed.

- 1 g. If possible, to nominate a candidate to be president of the convention
2 who comes from North Carolina's State delegation.
- 3 h. If necessary, to call for a vote for a candidate to be president who is
4 like-minded and comes from a state that has enacted this resolution,
5 whether or not the chair nominated the candidate to be president.
- 6 i. To try to avoid the nomination and election of a president who comes
7 from a state that did not pass this resolution.
- 8 j. To support establishing the following duties of the president:
- 9 1. To secure a vote from state delegations requiring that this
10 resolution be the rules of order at the convention; "Robert's
11 Rules of Order" may be adopted if they do not conflict with this
12 resolution.
- 13 2. To follow the terms, directives, and requirements in this
14 resolution.
- 15 3. To call for a vote requiring each state delegation to appoint one
16 delegate to be the delegation's spokesman.
- 17 4. To stay focused on the primary purpose, which is to have the
18 countermand amendment, as herein written, be sent to the states,
19 by way of the United States Congress, for ratification.
- 20 5. To recommend and request security measures as may be needed
21 at the convention.
- 22 6. To officiate at the nomination and installation of all officers at
23 the convention.
- 24 7. To establish the agenda at the convention as defined in this
25 resolution.
- 26 8. To provide equal time in floor discussions for all states, whether
27 for or against sending the countermand amendment to the states
28 for ratification.
- 29 9. To prohibit the introduction at the convention of any subject
30 matter or issue other than matters relating to the countermand
31 amendment, as herein written, and whether it should be sent to
32 the states for ratification.
- 33 10. To expedite deliberations by the state delegations and to prevent
34 unnecessary delays.
- 35 11. To authorize appropriate roll calls at the convention.
- 36 12. To settle all disputes between state delegations and delegates,
37 whether or not they are from a resolution state.
- 38 13. To recommend removal of the convention credentials of any
39 delegate, including convention officials, for causing security
40 problems at the convention.
- 41 14. To establish procedures for installing and recognizing alternates
42 who are to become delegates.
- 43 15. To call for a vote at the earliest favorable time to approve
44 sending the countermand amendment to the states for
45 ratification.
- 46 16. To call for a vote to decide which method of ratification the
47 convention recommends to the United States Congress, whether
48 by state legislatures or state conventions, and recommend to the
49 convention that ratification should be by legislatures; resolution
50 delegations are required to vote for ratification through state
51 legislatures.

- 1 17. To report to the United States Congress, the 50 state legislatures,
2 and the media the decisions of the convention.
- 3 18. To recommend formal requests, from time to time, to the state
4 legislatures, through representatives in the 50 state delegations,
5 for money that will be needed to carry on the business of the
6 convention.
- 7 19. If a candidate for president of the convention who does not come
8 from a state that has adopted this resolution wins the presidency,
9 then it is the duty of the chair and the delegates in the
10 legislature's delegation to take reasonable steps to argue for a
11 favorable vote by the convention to send the countermand
12 amendment, as herein written, to the states for ratification.
- 13 20. To follow the procedures in this resolution for electing other
14 officers as the convention considers necessary; the president of
15 the convention shall be responsible for defining the duties of
16 each office in accordance with the requirements of this
17 resolution.
- 18 21. To oppose and vote against any effort by state delegations to
19 delay a vote for the countermand amendment, or modify, alter,
20 or change the text of the countermand amendment, as herein
21 written.
- 22 22. To oppose and vote against any efforts by state delegations to
23 offer any other amendment to the constitution at the convention
24 other than the countermand amendment, as provided in Section
25 16 of this resolution.
- 26 (7) To make regular reports to the committee regarding all activities at the
27 convention.
- 28 (8) To notify the committee of financial or other needs North Carolina's State
29 delegation has at the convention.
- 30 **SECTION 14.** The delegates shall be required to follow the directives in this
31 resolution and others that may, from time to time, be issued by the General Assembly; each
32 delegate is charged with the following duties:
- 33 (1) To comply with directives made under this resolution.
- 34 (2) To follow the reasonable instructions of the chair and assistant chair of North
35 Carolina's State delegation that are consistent with the duties set out in this
36 resolution.
- 37 (3) To be amenable to the advice of the president of the convention when the
38 president is from a resolution state; if the president is from a nonresolution
39 state, work closely with the chair to find resolutions that are consistent with this
40 resolution.
- 41 (4) To work to advance all the requirements and directives in this resolution.
- 42 (5) To be subject to dismissal from North Carolina's State delegation for violation
43 of this resolution.
- 44 (6) To be bound by this resolution to vote at all state delegation roll calls consistent
45 with directives given to the chair in this resolution, which includes sending the
46 countermand amendment, as herein written, to the states for ratification by way
47 of the United States Congress.
- 48 (7) To attend all assigned business sessions at the convention.
- 49 (8) To help the chair to successfully complete the instructions in this resolution.
- 50 (9) To attend all meetings scheduled by the chair and to do all of the following:

- a. To report to the chair the results of the delegate's work among other state delegates.
- b. To assess and report to the chair the number of states that plan to vote in favor of the countermand amendment.
- c. To assess and report to the chair any problems or opportunities that may have developed or might develop relating to the purposes of this resolution.
- d. To recommend to the chair other strategies that may help join with at least 26 other states to vote favorably for the countermand amendment at the convention.

SECTION 15. The alternates of North Carolina's State delegation shall be required to follow the directives in this resolution and others that may be issued by the legislature; each alternate is charged with the following duties:

- (1) To be prepared to serve as a delegate if directed to do so by the committee or General Assembly.
- (2) To fulfill the duties required by this resolution when appointed as a delegate.

SECTION 16. The text of the countermand amendment that is to be sent to the state legislatures, via United States Congress, for ratification shall read as follows:

"Amendment XXVIII

"Section 1. The Article restores State sovereignty in our Constitutional Republic by providing State Legislatures Countermand authority.

"Section 2. State Legislatures in the several States shall have the authority to Countermand and rescind any Congressional Statute, Judicial decision, Executive Order, Treaty, government agency's regulatory ruling, or any other government or non-government mandate (including excessive spending and credit) imposed on them when in the opinion of 60 percent of State Legislatures the law or ruling adversely affects their States' interest. When the Countermand threshold has been reached, the law or ruling shall be immediately and automatically nullified and repealed. This Countermand authority shall also apply to existing laws and rulings.

"Section 3. From the time the initial Countermand is issued by a State Legislature, the other Legislatures shall have 18 months to complete the Countermand process. If the Countermand process is not completed in 18 months, then the law or ruling that is being challenged shall remain enforceable.

"Section 4. Each State Legislature must complete their Countermand affidavit and deliver a certified copy to the Chief Justice of the United States Supreme Court, the Leader of the United States Senate, the Speaker of the House of Representatives, the President of the United States, and, when applicable, the Government Agency or Body that is being challenged.

"Section 5. Any elected or non-elected government official, or any non-government individual or organization, who intentionally obstructs or prevents the implementation of any provision in this Article shall have committed a criminal offense and shall be subject to impeachment (when applicable) and criminal prosecution and upon conviction serve up to five years in prison.

"Section 6. Individual States shall have authority to prosecute violators of this Article under State laws in the absence of Federal prosecution after 90 days from the date of the alleged violation. Multiple prosecutions, by multiple States, for the same alleged crime are prohibited.

"Section 7. The Article shall be immediately part of the United States Constitution upon ratification by three quarters of the State Legislatures in the several States.

"Section 8. The provisions of this Article are enforceable within the United States which shall include the Several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States."

SECTION 17. This resolution is effective upon ratification.