

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH20217-MD-45C (03/02)

Short Title: Constitutional Amendment Convention/Countermand. (Public)

Sponsors: Representative Mark Brody.

Referred to:

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

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

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

34 Whereas, the delegates sent by the legislature to the countermand amendment
35 convention are representatives of the legislature and are thus required to fulfill the commission
36 assigned to them in this resolution; delegates appointed under this resolution are not free

1 agents; they are authorized only to complete the terms and conditions defined in this resolution,
2 and any actions by the delegates appointed under this resolution that are not authorized in the
3 resolution, or as amended and authorized by the legislature, are ultra vires and may not be
4 relied on by delegates from other states or by the convention; and

5 Whereas, the legislature hereby defines the duties and limits the authority of its
6 delegates to the convention as specifically provided by this resolution; Now, therefore,
7 The General Assembly of North Carolina enacts:

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

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

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

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

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

28 **SECTION 6.** Upon the enactment of this resolution and after a total of 34 states
29 place a call under Article V of the Constitution of the United States, for a countermand
30 convention, the Speaker of the House of Representatives shall appoint three members of the
31 House of Representatives, with one member being from the minority caucus, and the President
32 of the Senate shall appoint three members of the Senate, with one member being from the
33 minority caucus, to a legislative Delegate Credential Committee. The committee shall have the
34 responsibility and requisite authority to perform each of its assigned duties described in Section
35 11 of this resolution.

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

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

42 **SECTION 9.** The Delegate Credential Committee may meet during and between
43 legislative sessions.

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

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

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

27 28 DELEGATES' AND DELEGATE ALTERNATES' OATHS

29 "I pledge to follow the instructions in this delegate resolution and any other
30 directive consistent with this delegate resolution given to me by the Delegate Credential
31 Committee or the legislature, whether such directive is given to me directly or indirectly, from
32 the time I am certified by the committee to be a delegate or alternate and during the full term of
33 the countermand amendment convention, to the best of my abilities, so help me God."
34

35 CHAIR AND ASSISTANT CHAIR OF NORTH CAROLINA'S STATE DELEGATION 36 OATHS

37 "I pledge to follow the instructions in this delegate resolution and any other
38 directive consistent with this delegate resolution given to me by the Delegate Credential
39 Committee or the legislature, whether given to me directly or indirectly, from the time I am
40 certified by the committee to be the chair or assistant chair of North Carolina's State delegation
41 and during the full term of the countermand amendment convention, to the best of my abilities,
42 so help me God."
43

- 44 (9) To monitor the activities of North Carolina's State delegation.
- 45 (10) To keep close communications with the chair and assistant chair and provide
46 needed assistance when requested.
- 47 (11) To monitor the activities, deliberations, and all votes by the states at the
48 convention, and, when possible, to inform the chair, assistant chair, and
49 legislature of which states at the convention have enacted a similar
50 resolution for their delegates.

1 (12) To make reports, at least quarterly or more frequently if necessary, to the
2 General Assembly regarding the events at the convention, upcoming events,
3 and progress and prospects for ratification of the countermand amendment
4 by the delegations; and to make appropriate recommendations to the
5 legislature on actions needed to ensure the favorable vote by the state
6 delegations to send the countermand amendment, as set forth in Section 16
7 of this resolution, to the states, by way of the United States Congress, for
8 ratification.

9 (13) To recommend to the legislature removal of a delegate or alternate from all
10 convention activities for a violation of the provisions of this resolution and
11 to make recommendations regarding whether the delegate should have the
12 delegate's credentials invalidated; the committee's recommendation must be
13 approved by the General Assembly or by the party or agency appointed by the
State Legislature.

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

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

- 21 (1) To arrange to have at least one delegate from each resolution delegation be
22 the spokesman at every business meeting and roll call at the convention;
23 unless otherwise specified, the chair will be the state delegation's
24 spokesman.
- 25 (2) To distribute to all delegates a pocket-sized copy of the United States
26 Constitution.
- 27 (3) To instruct resolution and nonresolution state delegates of the mandate in
28 Section 4 of Article IV of the Constitution of the United States that
29 guarantees to each state a republican form of government, which gives each
30 state equal standing when applying for a convention and when voting at and
31 organizing the convention.
- 32 (4) To work closely with the chairs of all other state delegations to find mutual
33 agreement on the objectives in this resolution.
- 34 (5) To assign to North Carolina's delegates the following duty: assign to each
35 delegate a proportionate number of delegates from other state delegations for
36 the purpose of gaining consensus and agreement that the countermand
37 amendment, as herein written, should be sent to the states for ratification.
- 38 (6) To build a consensus between at least 26 state delegations, especially
39 resolution delegations, at the convention to do the following:
- 40 a. To require that each state delegation at the convention has only one
41 vote regardless of the number of delegates in a state delegation or the
42 population of a state as provided by Section 4 of Article IV of the
43 Constitution of the United States.
- 44 b. To require a simple majority vote at all roll calls to decide any and all
45 matters brought before the convention, including the question of
46 whether the countermand amendment, as herein written, should be
47 sent to the states for ratification.
- 48 c. To nominate and install convention officials who come from states
49 that have passed this resolution for their delegates and who agree
50 with sending the countermand amendment, as herein written, to the
51 states for ratification.

- 1 d. To require a quorum of 26 state delegations before business can be
2 conducted and before a vote can be taken to decide any and all
3 matters that may be presented at the convention.
- 4 e. To build a consensus of at least 26 state delegations to work together
5 for the mutual goal of sending the countermand amendment, as set
6 forth in Section 16 of this resolution, back to the states for
7 ratification.
- 8 f. To work to conclude convention business in 21 days; in no case is
9 the convention to be longer than 180 days, unless the convention
10 votes to extend the termination date by 180 days; no further
11 extensions are to be allowed.
- 12 g. If possible, to nominate a candidate to be president of the convention
13 who comes from North Carolina's delegation.
- 14 h. If necessary, to call for a vote for a candidate to be president who is
15 like-minded and comes from a state that has enacted this resolution,
16 whether or not the chair nominated the candidate to be president.
- 17 i. To try to avoid the nomination and election of a president who comes
18 from a state that did not pass this resolution.
- 19 j. To support establishing the following duties of the president:
- 20 1. To secure a vote from state delegations requiring that this
21 resolution be the rules of order at the convention; "Robert's
22 Rules of Order" may be adopted if they do not conflict with
23 this resolution.
- 24 2. To follow the terms, directives, and requirements in this
25 resolution.
- 26 3. To call for a vote requiring each state delegation to appoint
27 one delegate to be the delegation's spokesman.
- 28 4. To stay focused on the primary purpose, which is to have the
29 countermand amendment, as herein written, be sent to the
30 states, by way of the United States Congress, for ratification.
- 31 5. To recommend and request security measures as may be
32 needed at the convention.
- 33 6. To officiate at the nomination and installation of all officers
34 at the convention.
- 35 7. To establish the agenda at the convention as defined in this
36 resolution.
- 37 8. To provide equal time in floor discussions for all states,
38 whether for or against sending the countermand amendment
39 to the states for ratification.
- 40 9. To prohibit the introduction at the convention of any subject
41 matter or issue other than matters relating to the countermand
42 amendment, as herein written, and whether it should be sent
43 to the states for ratification.
- 44 10. To expedite deliberations by the state delegations and to
45 prevent unnecessary delays.
- 46 11. To authorize appropriate roll calls at the convention.
- 47 12. To settle all disputes between state delegations and delegates,
48 whether or not they are from a resolution state.
- 49 13. To recommend removal of the convention credentials of any
50 delegate, including convention officials, for causing security
51 problems at the convention.

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

1 state, work closely with the chair to find resolutions that are consistent with
2 this resolution.

3 (4) To work to advance all the requirements and directives in this resolution.

4 (5) To be subject to dismissal from the State delegation for violation of this
5 resolution.

6 (6) To be bound by this resolution to vote at all state delegation roll calls
7 consistent with directives given to the chair in this resolution, which includes
8 sending the countermand amendment, as herein written, to the states for
9 ratification by way of the United States Congress.

10 (7) To attend all assigned business sessions at the convention.

11 (8) To help the chair to successfully complete the instructions in this resolution.

12 (9) To attend all meetings scheduled by the chair and to do all of the following:

13 a. To report to the chair the results of the delegate's work among other
14 state delegates.

15 b. To assess and report to the chair the number of states that plan to
16 vote in favor of the countermand amendment.

17 c. To assess and report to the chair any problems or opportunities that
18 may have developed or might develop relating to the purposes of this
19 resolution.

20 d. To recommend to the chair other strategies that may help join with at
21 least 26 other states to vote favorably for the countermand
22 amendment at the convention.

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

26 (1) To be prepared to serve as a delegate if directed to do so by the committee or
27 General Assembly.

28 (2) To fulfill the duties required by this resolution when appointed as a delegate.

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

31 **"Amendment XXVIII**

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

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

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

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

49 **"Section 5.** Any elected or nonelected government official, or any nongovernment
50 individual or organization, who intentionally obstructs or prevents the implementation of any
51 provision in this Article shall have committed a criminal offense and shall be subject to

1 impeachment (when applicable) and criminal prosecution and upon conviction serve up to five
2 years in prison.

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

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

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

12 **SECTION 17.** This act is effective when it becomes law.