

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

1

HOUSE BILL 53

Short Title: NC Right to Work/Secret Ballot Amendments. (Public)

Sponsors: Representatives Tillis, Moffitt, Murry, and Goodman (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

February 4, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA CONSTITUTION TO GUARANTEE THE RIGHT OF AN INDIVIDUAL TO WORK, TO MAKE ANY CONTRACT BETWEEN A STATE OR LOCAL GOVERNMENTAL ENTITY AND A LABOR ORGANIZATION AS BARGAINING AGENT CONCERNING GOVERNMENT EMPLOYEES ILLEGAL, AND TO PRESERVE THE RIGHT OF AN INDIVIDUAL TO VOTE BY SECRET BALLOT FOR AN ELECTION, DESIGNATION, OR AUTHORIZATION FOR EMPLOYEE REPRESENTATION BY A LABOR ORGANIZATION.

The General Assembly of North Carolina enacts:

PART I. GUARANTEE RIGHT TO WORK

SECTION 1.1. Article I of the North Carolina Constitution is amended by adding a new section to read:

"Sec. 38. Right to Work.

(1) The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in a labor organization.

(2) The term "labor organization" as used in this section means any trade union, labor union, or other labor association."

SECTION 1.2. The amendment set out in Section 1.1 of this act shall be submitted to the qualified voters of the State in October 2013, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

Constitutional amendment to provide that the right to live includes the right to work and therefore the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor organization."

SECTION 1.3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1.1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.



1 SECTION 1.4. The amendment set out in Section 1.1 of this act is effective upon
2 certification.

3
4 **PART II. NO PUBLIC EMPLOYEE COLLECTIVE BARGAINING**

5 SECTION 2.1. Article I of the North Carolina Constitution is amended by adding a
6 new section to read:

7 **"Sec. 39. Certain contracts between State and local governmental entities and labor**
8 **organizations concerning government employees declared to be illegal.**

9 (1) Any agreement or contract between a State or local governmental entity and any
10 labor organization as a bargaining agent for government employees is hereby declared to be
11 against the public policy of the State and therefore is illegal and of no effect.

12 (2) The phrase "State or local governmental entity" as used in this section means (i) any
13 agency, department, or institution of the legislative, executive, or judicial branches of
14 government; (ii) any local political subdivision of the State; and (iii) a local board of education
15 or a public institution of higher learning."

16 SECTION 2.2. The amendment set out in Section 2.1 of this act shall be submitted
17 to the qualified voters of the State in October 2013, which election shall be conducted under the
18 laws then governing elections in the State. Ballots, voting systems, or both may be used in
19 accordance with Chapter 163 of the General Statutes. The question to be used in the voting
20 systems and ballots shall be:

21 FOR AGAINST

22 Constitutional amendment providing that any agreement or contract between a State
23 or local governmental entity and a labor organization as bargaining agent for government
24 employees is illegal and of no effect."

25 SECTION 2.3. If a majority of votes cast on the question are in favor of the
26 amendment set out in Section 2.1 of this act, the State Board of Elections shall certify the
27 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
28 certified among the permanent records of that office.

29 SECTION 2.4. The amendment set out in Section 2.1 of this act is effective upon
30 certification.

31
32 **PART III. PRESERVE RIGHT TO SECRET BALLOT ON EMPLOYEE**
33 **REPRESENTATION**

34 SECTION 3.1. Article I of the North Carolina Constitution is amended by adding a
35 new section to read:

36 **"Sec. 40. Secret ballot on employee representation.**

37 (1) The fundamental right of an individual to vote by secret ballot for employee
38 representation by a labor organization shall be guaranteed where State or federal law permits or
39 requires elections, designations, or authorizations for employee representation by a labor
40 organization.

41 (2) The term "labor organization" as used in this section means a trade union, labor
42 union, or labor association."

43 SECTION 3.2. The amendment set out in Section 3.1 of this act shall be submitted
44 to the qualified voters of the State in October 2013, which election shall be conducted under the
45 laws then governing elections in the State. Ballots, voting systems, or both may be used in
46 accordance with Chapter 163 of the General Statutes. The question to be used in the voting
47 systems and ballots shall be:

48 FOR AGAINST

49 Constitutional amendment providing that the fundamental right of an individual to
50 vote by secret ballot for employee representation by a labor organization shall be guaranteed

1 where State or federal law permits or requires election, designation, or an authorization for
2 employee representation by a labor organization."

3 **SECTION 3.3.** If a majority of votes cast on the question are in favor of the
4 amendment set out in Section 3.1 of this act, the State Board of Elections shall certify the
5 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
6 certified among the permanent records of that office.

7 **SECTION 3.4.** The amendment set out in Section 3.1 of this act is effective upon
8 certification.

10 **PART IV. CONFORMING STATUTORY CHANGES**

11 **SECTION 4.(a)** If the qualified voters approve the constitutional amendment set
12 forth in Part I of this act, then Article 10 of Chapter 95 of the General Statutes reads as
13 rewritten:

14 "Article 10.

15 "Declaration of Policy as to Labor Organizations.

16 **"§ 95-78. Declaration of public policy.**

17 (a) The right to live includes the right to work. The exercise of the right to work must
18 be protected and maintained free from undue restraints and coercion. It is hereby declared to
19 be the public policy of North Carolina that the right of persons to work shall not be denied or
20 abridged on account of membership or nonmembership in any labor ~~union or labor organization~~
21 ~~or association.~~ organization.

22 (b) The term "labor organization" as used in this Article means any trade union, labor
23 union, or other labor association.

24 **"§ 95-79. Certain agreements declared illegal.**

25 Any agreement or combination between any employer and any labor ~~union or labor~~
26 organization whereby persons not members of ~~such union or the labor~~ organization shall be
27 denied the right to work for ~~said the~~ employer, or whereby such membership is made a
28 condition of employment or continuation of employment by ~~such the~~ employer, or whereby any
29 such union or organization acquires an employment monopoly in any enterprise, is hereby
30 declared to be against the public policy and an illegal combination or conspiracy in restraint of
31 trade or commerce in the State of North Carolina.

32 **"§ 95-80. Membership in labor organization as condition of employment prohibited.**

33 No person shall be required by an employer to become or remain a member of any labor
34 ~~union or labor~~ organization as a condition of employment or continuation of employment by
35 such employer.

36 **"§ 95-81. Nonmembership as condition of employment prohibited.**

37 No person shall be required by an employer to abstain or refrain from membership in any
38 labor ~~union or labor~~ organization as a condition of employment or continuation of
39 employment.

40 **"§ 95-82. Payment of dues as condition of employment prohibited.**

41 No employer shall require any person, as a condition of employment or continuation of
42 employment, to pay any dues, fees, or other charges of any kind to any labor ~~union or labor~~
43 organization.

44 **"§ 95-83. Recovery of damages by persons denied employment.**

45 Any person who may be denied employment or be deprived of continuation of ~~his the~~
46 ~~person's~~ employment in violation of G.S. 95-80, 95-81 and 95-82 or of one or more of such
47 sections, shall be entitled to recover from ~~such the~~ employer and from any other person, firm,
48 corporation, or association acting in concert with ~~him the~~ employer by appropriate action in the
49 courts of this State such damages as ~~he the~~ person may have sustained by reason of such denial
50 or deprivation of employment.

51 **"§ 95-84. Application of Article.**

1 The provisions of this Article shall ~~do~~ not apply to any lawful contract in force on the
2 effective date hereof but they shall apply in all respects to contracts entered into thereafter and
3 to any renewal or extension of any existing contract."

4 **SECTION 4.(b)** If the qualified voters approve the constitutional amendment set
5 forth in Part II of this act, then Article 11 of Chapter 95 of the General Statutes reads as
6 rewritten:

7 "**§ 95-98. ~~Contracts between units of government and labor unions, trade unions~~**
8 **or Certain contracts between State and local governmental entities and labor**
9 **organizations concerning public-government employees declared to be illegal.**

10 (a) Any agreement, or contract, between ~~the governing authority of any city, town,~~
11 ~~county, or other municipality, or between any agency, unit, or instrumentality thereof, or~~
12 ~~between any agency, instrumentality, or institution of the State of North Carolina, and any~~
13 ~~labor union, trade union, or a State or local governmental entity and a labor organization, as~~
14 ~~bargaining agent for any public-employees of such city, town, county or other municipality, or~~
15 ~~agency or instrumentality of government, the entity is hereby declared to be against the public~~
16 ~~policy of the State, illegal, unlawful, void and of no effect.~~

17 (b) The following definitions apply in this Article:

18 (1) Labor organization. – Any trade union, labor union, or other labor
19 association the purpose of which includes serving as a bargaining agent for
20 collective bargaining on the behalf of employees in this State.

21 (2) State or local governmental entity. – (i) Any agency, department, or
22 institution of the legislative, executive, or judicial branches of government;
23 (ii) any local political subdivision of the State; and (iii) a local board of
24 education or a public institution of higher learning.

25 "**§ 95-98.1. Strikes by public-government employees prohibited.**

26 Strikes by public-government employees are hereby declared illegal and against the public
27 policy of this State. No person holding a position either full-or part-time by appointment or
28 employment with ~~the State of North Carolina or in any county, city, town or other political~~
29 ~~subdivision of the State of North Carolina, or in any agency of any of them, a State or local~~
30 governmental entity shall willfully participate in a strike by public-government employees.

31 "**§ 95-98.2. Strike defined.**

32 The word "strike" as used herein shall mean a cessation or deliberate slowing down of work
33 by a combination of persons as a means of enforcing compliance with a demand upon the
34 employer, but shall not include protected activity under Article 16 of this Chapter: Provided,
35 however, that nothing herein shall limit or impair the right of any public-government employee
36 to express or communicate a complaint or opinion on any matter related to the conditions of
37 public-government employment so long as the same is not designed to and does not interfere
38 with the full, faithful, and proper performance of the duties of employment.

39 "**§ 95-99. Penalty for violation of Article.**

40 ~~Any violation of the provisions~~ Violation of this Article is ~~hereby declared to be~~ a Class 1
41 misdemeanor.

42 "**§ 95-100. No provisions of Article 10 of Chapter 95 applicable to units of government**
43 **State or local governmental entities or their employees.**

44 The provisions of Article 10 of Chapter 95 of the General Statutes do not apply to State or
45 local governmental entities, shall not apply to the State of North Carolina or any agency,
46 institution, or instrumentality thereof or the employees of same nor shall the provisions of
47 Article 10 of Chapter 95 of the General Statutes apply to any public employees or any
48 employees of any town, city, county or other municipality or the agencies or instrumentalities
49 thereof, nor shall said Article apply to employees of the State or any agencies, instrumentalities
50 or institutions thereof or to any public employees whatsoever."

1
2

PART V. EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law.