

1 HB87  
2 147358-1  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 05-FEB-13  
6 PFD: 02/01/2013

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8 SYNOPSIS: This bill would provide that any judge  
9 authorized to issue a search warrant pursuant to  
10 the Alabama Rules of Criminal Procedure may issue a  
11 warrant for the installation, removal, maintenance,  
12 use, or monitoring of a tracking device.

13 Amendment 621 of the Constitution of Alabama  
14 of 1901, now appearing as Section 111.05 of the  
15 Official Recompilation of the Constitution of  
16 Alabama of 1901, as amended, prohibits a general  
17 law whose purpose or effect would be to require a  
18 new or increased expenditure of local funds from  
19 becoming effective with regard to a local  
20 governmental entity without enactment by a 2/3 vote  
21 unless: it comes within one of a number of  
22 specified exceptions; it is approved by the  
23 affected entity; or the Legislature appropriates  
24 funds, or provides a local source of revenue, to  
25 the entity for the purpose.

26 The purpose or effect of this bill would be  
27 to require a new or increased expenditure of local

1 funds within the meaning of the amendment. However,  
2 the bill does not require approval of a local  
3 governmental entity or enactment by a 2/3 vote to  
4 become effective because it comes within one of the  
5 specified exceptions contained in the amendment.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to criminal surveillance; to provide that  
12 an authorized judge may issue a warrant for the installation,  
13 removal, maintenance, use, and monitoring of a tracking  
14 device; to provide for the crime of unlawfully installing a  
15 tracking device; and in connection therewith would have as its  
16 purpose or effect the requirement of a new or increased  
17 expenditure of local funds within the meaning of Amendment 621  
18 of the Constitution of Alabama of 1901, now appearing as  
19 Section 111.05 of the Official Recompilation of the  
20 Constitution of Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. (a) Any judge authorized to issue a  
23 search warrant pursuant to Rule 3.7 of the Alabama Rules of  
24 Criminal Procedure is authorized to issue a warrant to install  
25 a tracking device. The term tracking device means an  
26 electronic or mechanical device which permits the tracking of  
27 the movement of a person or object.

1                   (b) Upon the written application of any law  
2 enforcement officer or district attorney of the state,  
3 including assistant and deputy district attorneys, any  
4 authorized judge may issue a warrant for the installation,  
5 removal, maintenance, use, or monitoring of a tracking device.  
6 The warrant application shall do all of the following:

7                   (1) State facts sufficient to show cause that a  
8 crime is being, has been, or is about to be committed.

9                   (2) Clearly identify the person, if reasonably  
10 determinable, or object, or both, that is, was, or will be  
11 involved in the commission of the alleged offense.

12                   (3) Describe, with particularity, the item or  
13 person, or both, to be tracked by use of a tracking device.

14                   (c) A warrant for a tracking device shall clearly  
15 identify the person, if reasonably determinable, or the object  
16 to be tracked, or both, and specify a reasonable length of  
17 time that the tracking device may be used, not to exceed 45  
18 days from the date that the warrant was issued unless the  
19 issuing judge grants one or more extensions for a reasonable  
20 time not to exceed 45 days each, based on renewed or ongoing  
21 probable cause, or both. The warrant shall include the  
22 authorization for access to and into the object that will be  
23 tracked and any building or structure in which the object is  
24 located for the limited purpose of installing the tracking  
25 device or for maintenance or retrieval of the tracking device.  
26 The warrant shall state that the tracking device may be  
27 installed, repaired, removed, and monitored at any time of the

1 day or night. The warrant shall command the officer to do all  
2 of the following:

3 (1) Install the tracking device upon the person or  
4 object to be tracked while the person or object is within the  
5 jurisdiction of the judge issuing the warrant.

6 (2) Complete the installation within 10 days from  
7 the date the warrant is issued.

8 (3) Require that the law enforcement officer make a  
9 written return of the warrant to the judge issuing the warrant  
10 or other authorized judge in the jurisdiction where the  
11 warrant was issued if the issuing judge is not available.

12 (d) The law enforcement officer executing the  
13 warrant shall:

14 (1) Enter on the warrant the exact date and time the  
15 device was installed and the period during which it was used.

16 (2) Promptly return the warrant, with a copy of the  
17 inventory collected pursuant to the warrant, to the issuing  
18 judge or other authorized judge in the jurisdiction where the  
19 warrant was issued if the issuing judge is not available.

20 (e) Within 10 days after the use of the tracking  
21 device has ended, the officer executing a tracking device  
22 warrant must serve a copy of the warrant on the person who was  
23 tracked or whose property was tracked. Service may be  
24 accomplished by delivering a copy of the warrant to the person  
25 who was tracked or whose property was tracked, or by leaving a  
26 copy at that person's residence or usual place of abode with  
27 an individual of suitable age and discretion who resides at

1 that location and mailing a copy to the person's last known  
2 address. Upon request of the state, the judge may delay notice  
3 as provided in subsection (g).

4 (f) The officer who obtained the warrant shall  
5 remove or cause to be removed the tracking device as soon as  
6 it is practicable after the authorization period expires. If  
7 removal is not practicable, monitoring of the mobile tracking  
8 device shall cease on expiration of the warrant.

9 (g) With respect to a warrant issued pursuant to  
10 this act, notice to the person who was tracked or whose  
11 property was tracked may be delayed upon the request of  
12 applicant if any of the following applies:

13 (1) The court finds reasonable cause to believe that  
14 providing immediate notification of the execution of the  
15 warrant may have an adverse result. An adverse result means:

16 a. A threat to the life or physical safety of an  
17 individual.

18 b. Flight from prosecution.

19 c. Destruction of or tampering with evidence.

20 d. Intimidation of potential witnesses.

21 e. Any occurrence that would seriously jeopardize an  
22 investigation or unduly delay a trial.

23 (2) The warrant provides that notice shall be given  
24 within a reasonable period not to exceed 90 days after the  
25 date the warrant was returned to the issuing judge or  
26 authorized judge in the jurisdiction where the warrant was  
27 issued if the issuing judge is not available, provided,

1       however, that the delayed notification shall be served no  
2       later than the date of an indictment or accusation, or both,  
3       which is based wholly or in part upon the results of the  
4       tracking device.

5               (h) The warrant shall direct that the affidavit,  
6       application, warrant, inventory, and return be sealed until  
7       notice is given to the person who was tracked or whose  
8       property was tracked.

9               (i) If an authorized judge issues a warrant for a  
10       tracking device in accordance with this act, the device shall  
11       be installed in any county within the jurisdiction of the  
12       issuing judge and may be monitored in any location in the  
13       State of Alabama from any location within the State of  
14       Alabama. Unless otherwise prohibited by federal law, the  
15       device may be monitored from any location within the State of  
16       Alabama even if the device is transported outside the State of  
17       Alabama.

18              (j) Any person commits the crime of unlawfully  
19       installing a tracking device if he or she intentionally  
20       installs a tracking device without following the procedures  
21       established in this act. The unlawful installation of a  
22       tracking device is a Class A misdemeanor.

23              Section 2. Although this bill would have as its  
24       purpose or effect the requirement of a new or increased  
25       expenditure of local funds, the bill is excluded from further  
26       requirements and application under Amendment 621, now  
27       appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the  
2 bill defines a new crime or amends the definition of an  
3 existing crime.

4 Section 3. This act shall become effective on the  
5 first day of the third month following its passage and  
6 approval by the Governor, or its otherwise becoming law.