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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SB12
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8 SYNOPSIS: Under existing law, a capital defendant may
9 be executed by lethal injection or electrocution,
10 upon the election of the defendant.

11 This bill would allow a capital defendant to
12 elect to be executed by means of nitrogen hypoxia.
13

14 A BILL

15 TO BE ENTITLED

16 AN ACT
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18 To amend Sections 15-18-82 and 15-18-82.1, Code of
19 Alabama 1975, to allow capital defendants to elect to be
20 executed by nitrogen hypoxia.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 15-18-82 and 15-18-82.1, Code of
23 Alabama 1975, are amended to read as follows:

24 "§15-18-82.

25 "(a) Where the sentence of death is pronounced
26 against a convict, the sentence shall be executed at any hour

1 on the day set for the execution, not less than 30 nor more
2 than 100 days from the date of sentence, as the court may
3 adjudge, by lethal injection unless the convict elects
4 execution by electrocution or nitrogen hypoxia as provided by
5 law. If electrocution or nitrogen hypoxia are held
6 unconstitutional, the method of execution shall be lethal
7 injection.

8 "(b) Executions shall take place at the William C.
9 Holman unit of the prison system at Atmore in a room or area
10 arranged for that purpose. It shall be the duty of the
11 Department of Corrections of this state to provide the
12 necessary ~~room and appliances~~ facilities, instruments, and
13 accommodations to carry out the execution.

14 "(c) The warden of the William C. Holman unit of the
15 prison system at Atmore or, in case of his or her death,
16 disability, or absence, his or her deputy, shall be the
17 executioner. In the case of execution by lethal injection, the
18 warden, or in the case of his or her death, disability, or
19 absence, his or her deputy, may designate an employee of the
20 unit to administer the lethal injection. In the event of the
21 death or disability or absence of both the warden and deputy,
22 the executioner shall be that person appointed by the
23 Commissioner of the Department of Corrections.

24 "§15-18-82.1.

25 "(a) A death sentence shall be executed by lethal
26 injection, unless the person sentenced to death affirmatively

1 elects to be executed by electrocution or nitrogen hypoxia.

2 The sentence shall be executed pursuant to Section 15-18-82.

3 "(b) A person convicted and sentenced to death for a
4 capital crime at any time shall have one opportunity to elect
5 that his or her death sentence be executed by electrocution or
6 nitrogen hypoxia.

7 "(i) The election for death by electrocution is
8 waived unless it is personally made by the person in writing
9 and delivered to the warden of the correctional facility
10 within 30 days after the certificate of judgment pursuant to a
11 decision by the Alabama Supreme Court affirming the sentence
12 of death or, if a certificate of judgment is issued before
13 July 1, 2002, the election must be made and delivered to the
14 warden within 30 days after July 1, 2002. If a warrant of
15 execution is pending on July 1, 2002, or if a warrant is
16 issued within 30 days after July 1, 2002, the person sentenced
17 to death who is the subject of the warrant shall waive
18 election of electrocution as the method of execution unless a
19 written election signed by the person is submitted to the
20 warden of the correctional facility no later than 48 hours
21 after a new date for execution of the death sentence is set.

22 "(ii) The election for death by nitrogen hypoxia is
23 waived unless it is personally made by the person in writing
24 and delivered to the warden of the correctional facility
25 within 30 days after the certificate of judgment pursuant to a
26 decision by the Alabama Supreme Court affirming the sentence

1 of death. If a certificate of judgment is issued before the
2 effective date of the act adding this language, the election
3 must be made and delivered to the warden within 30 days of
4 that date. If a warrant of execution is pending on the
5 effective date of the act adding this language, or if a
6 warrant is issued within 30 days of that date, the person who
7 is the subject of the warrant shall waive election of nitrogen
8 hypoxia as the method of execution unless a written election
9 signed by the person is submitted to the warden of the
10 correctional facility not later than 48 hours after the
11 effective date of the act adding this language, or after the
12 warrant is issued, whichever is later.

13 "(c) If electrocution, nitrogen hypoxia, or and
14 lethal injection is are all held to be unconstitutional by the
15 Alabama Supreme Court under the Constitution of Alabama of
16 1901, or held to be unconstitutional by the United States
17 Supreme Court under the United States Constitution, or if the
18 United States Supreme Court declines to review any judgment
19 holding a method of execution to be unconstitutional under the
20 United States Constitution made by the Alabama Supreme Court
21 or the United States Court of Appeals that has jurisdiction
22 over Alabama, then all persons sentenced to death ~~for a~~
23 ~~capital crime~~ shall be executed by any constitutional method
24 of execution based on the sole discretion of the Commissioner
25 of the Department of Corrections.

1 "(d) The provisions of the opinion and all points of
2 law decided by the United States Supreme Court in *Malloy v.*
3 *South Carolina*, 237 U.S. 180 (1915), finding that the Ex Post
4 Facto Clause of the United States Constitution is not violated
5 by a legislatively enacted change in the method of execution
6 for a sentence of death validly imposed for previously
7 committed capital murders, are adopted by the Legislature as
8 the law of this state.

9 "(e) A change in the method of execution shall not
10 increase the punishment or modify the penalty of death for
11 capital murder. Any legislative change to the method of
12 execution for the crime of capital murder shall not violate
13 Section 22 of Article I of the Constitution of Alabama of
14 1901.

15 "(f) Notwithstanding any law to the contrary, a
16 person authorized by state law to prescribe medication and
17 designated by the Department of Corrections may prescribe the
18 drug or drugs necessary to compound a lethal injection.
19 Notwithstanding any law to the contrary, a person authorized
20 by state law to prepare, compound, or dispense medication and
21 designated by the Department of Corrections may prepare,
22 compound, or dispense a lethal injection. For purposes of this
23 section, prescription, preparation, compounding, dispensing,
24 and administration of a lethal injection shall not constitute
25 the practice of medicine, nursing, or pharmacy.
26 Notwithstanding any law to the contrary, a person designated

1 by the Department of Corrections to participate in an
2 execution in any capacity shall be exempt from criminal
3 liability for necessary actions taken to carry out the
4 execution.

5 "(g) The policies and procedures of the Department
6 of Corrections for execution of persons sentenced to death
7 shall be exempt from the Alabama Administrative Procedure Act,
8 Chapter 22 of Title 41.

9 "(h) No sentence of death shall be reduced as a
10 result of a determination that a method of execution is
11 declared unconstitutional under the Constitution of Alabama of
12 1901, or the Constitution of the United States. In any case in
13 which an execution method is declared unconstitutional, the
14 death sentence shall remain in force until the sentence can be
15 lawfully executed by any valid method of execution.

16 "(i) Nothing contained in this section is intended
17 to require any physician, nurse, pharmacist, or employee of
18 the Department of Corrections or any other person to assist in
19 any aspect of an execution which is contrary to the person's
20 moral or ethical beliefs."

21 Section 2. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.