

1 HB359  
2 205763-1  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 27-FEB-20

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8 SYNOPSIS: Under existing law, a sentence of death in a  
9 capital murder case must be based on a vote of at  
10 least 10 jurors.

11 This bill would require a unanimous vote by  
12 the jurors to recommend a sentence of death.

13 This bill would also make nonsubstantive,  
14 technical revisions to update the existing code  
15 language to current style.

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

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

3 The purpose or effect of this bill would be  
4 to require a new or increased expenditure of local  
5 funds within the meaning of the amendment.

6 However, the bill does not require approval of a  
7 local governmental entity or enactment by a 2/3  
8 vote to become effective because it comes within  
9 one of the specified exceptions contained in the  
10 amendment.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
15

16 Relating to sentencing; to amend Section 13A-5-46,  
17 Code of Alabama 1975, to require a unanimous vote of a jury to  
18 recommend a death sentence in a capital murder case; to make  
19 nonsubstantive, technical revisions to update the existing  
20 code language to current style; and in connection therewith  
21 would have as its purpose or effect the requirement of a new  
22 or increased expenditure of local funds within the meaning of  
23 Amendment 621 of the Constitution of Alabama of 1901, now  
24 appearing as Section 111.05 of the Official ReCompilation of  
25 the Constitution of Alabama of 1901, as amended.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Section 13A-5-46, Code of Alabama 1975,  
2 is amended to read as follows:

3           "§13A-5-46.

4           "(a) Unless both parties with the consent of the  
5 court waive the right to have the sentence hearing conducted  
6 before a jury as provided in Section 13A-5-44(c), it shall be  
7 conducted before a jury which shall return a verdict as  
8 provided by subsection (e) of this section. If both parties  
9 with the consent of the court waive the right to have the  
10 hearing conducted before a jury, the trial judge shall proceed  
11 to determine sentence without a verdict from a jury.  
12 Otherwise, the hearing shall be conducted before a jury as  
13 provided in ~~the remaining subsections of~~ this section.

14           "(b) If the defendant was tried and convicted by a  
15 jury, the sentence hearing shall be conducted before that same  
16 jury unless it is impossible or impracticable to do so. If it  
17 is impossible or impracticable for the trial jury to sit at  
18 the sentence hearing, or if the case on appeal is remanded for  
19 a new sentence hearing before a jury, a new jury shall be  
20 impanelled to sit at the sentence hearing. The selection of  
21 that jury shall be according to the laws and rules governing  
22 the selection of a jury for the trial of a capital case.

23           "(c) The separation of the jury during the pendency  
24 of the sentence hearing, and if the sentence hearing is before  
25 the same jury which convicted the defendant, the separation of  
26 the jury during the time between the guilty verdict and the  
27 beginning of the sentence hearing, shall be governed by the

1 law and court rules applicable to the separation of the jury  
2 during the trial of a capital case.

3 "(d) After hearing the evidence and the arguments of  
4 both parties at the sentence hearing, the jury shall be  
5 instructed on its function and on the relevant law by the  
6 trial judge. The jury shall then retire to deliberate  
7 concerning the verdict it is to return.

8 "(e) After deliberation, the jury shall return a  
9 verdict as follows:

10 "(1) If the jury determines that no aggravating  
11 circumstances as defined in Section 13A-5-49 exist, it shall  
12 return a verdict of life imprisonment without parole~~7~~.

13 "(2) If the jury determines that one or more  
14 aggravating circumstances as defined in Section 13A-5-49 exist  
15 but do not outweigh the mitigating circumstances, it shall  
16 return a verdict of life imprisonment without parole~~7~~.

17 "(3) If the jury determines that one or more  
18 aggravating circumstances as defined in Section 13A-5-49 exist  
19 and that they outweigh the mitigating circumstances, if any,  
20 it shall return a verdict of death.

21 "(f) The decision of the jury to return a verdict  
22 recommending a sentence of life imprisonment without parole  
23 ~~must~~ shall be based on a vote of a majority of the jurors. The  
24 decision of the jury to recommend a sentence of death ~~must be~~  
25 ~~based on a vote of at least 10 jurors~~ shall be unanimous. The  
26 verdict of the jury ~~must~~ shall be in writing and ~~must~~ shall  
27 specify the vote.

1           "(g) If the jury is unable to reach a verdict  
2 recommending a sentence, or for other manifest necessity, the  
3 trial court may declare a mistrial of the sentence hearing.  
4 ~~Such a~~ The mistrial shall not affect the conviction. After  
5 ~~such~~ a mistrial or mistrials another sentence hearing shall be  
6 conducted before another jury, selected according to the laws  
7 and rules governing the selection of a jury for the trial of a  
8 capital case. Provided, however, that, subject to the  
9 provisions of Section 13A-5-44(c), after one or more mistrials  
10 both parties with the consent of the court may waive the right  
11 to have a verdict from a jury, in which event the issue of  
12 sentence shall be submitted to the trial court without a  
13 recommendation from a jury."

14           Section 2. Although this bill would have as its  
15 purpose or effect the requirement of a new or increased  
16 expenditure of local funds, the bill is excluded from further  
17 requirements and application under Amendment 621, now  
18 appearing as Section 111.05 of the Official Recompilation of  
19 the Constitution of Alabama of 1901, as amended, because the  
20 bill defines a new crime or amends the definition of an  
21 existing crime.

22           Section 3. This act shall become effective  
23 immediately following its passage and approval by the  
24 Governor, or its otherwise becoming law.