

1 SB12
2 183525-3
3 By Senator Pittman
4 RFD: Judiciary
5 First Read: 07-FEB-17
6 PFD: 11/04/2016

1 SB12

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 15-18-82 and 15-18-82.1, Code of
12 Alabama 1975, to allow capital defendants to elect to be
13 executed by nitrogen hypoxia.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 "§15-18-82.

18 "(a) Where the sentence of death is pronounced
19 against a convict, the sentence shall be executed at any hour
20 on the day set for the execution, not less than 30 nor more
21 than 100 days from the date of sentence, as the court may
22 adjudge, by lethal injection unless the convict elects
23 execution by electrocution or nitrogen hypoxia as provided by
24 law. If electrocution or nitrogen hypoxia are held
25 unconstitutional, the method of execution shall be lethal
26 injection.

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

7 "(c) The warden of the William C. Holman unit of the
8 prison system at Atmore or, in case of his or her death,
9 disability, or absence, his or her deputy, shall be the
10 executioner. In the case of execution by lethal injection, the
11 warden, or in the case of his or her death, disability, or
12 absence, his or her deputy, may designate an employee of the
13 unit to administer the lethal injection. In the event of the
14 death or disability or absence of both the warden and deputy,
15 the executioner shall be that person appointed by the
16 Commissioner of the Department of Corrections.

17 "§15-18-82.1.

18 "(a) A death sentence shall be executed by lethal
19 injection, unless the person sentenced to death affirmatively
20 elects to be executed by electrocution or nitrogen hypoxia.
21 The sentence shall be executed pursuant to Section 15-18-82.

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

26 "(i) The election for death by electrocution is
27 waived unless it is personally made by the person in writing

1 and delivered to the warden of the correctional facility
2 within 30 days after the certificate of judgment pursuant to a
3 decision by the Alabama Supreme Court affirming the sentence
4 of death or, if a certificate of judgment is issued before
5 July 1, 2002, the election must be made and delivered to the
6 warden within 30 days after July 1, 2002. If a warrant of
7 execution is pending on July 1, 2002, or if a warrant is
8 issued within 30 days after July 1, 2002, the person sentenced
9 to death who is the subject of the warrant shall waive
10 election of electrocution as the method of execution unless a
11 written election signed by the person is submitted to the
12 warden of the correctional facility no later than 48 hours
13 after a new date for execution of the death sentence is set.

14 "(ii) The election for death by nitrogen hypoxia is
15 waived unless it is personally made by the person in writing
16 and delivered to the warden of the correctional facility
17 within 30 days after the certificate of judgment pursuant to a
18 decision by the Alabama Supreme Court affirming the sentence
19 of death. If a certificate of judgment is issued before the
20 effective date of the act adding this language, the election
21 must be made and delivered to the warden within 30 days of
22 that date. If a warrant of execution is pending on the
23 effective date of the act adding this language, or if a
24 warrant is issued within 30 days of that date, the person who
25 is the subject of the warrant shall waive election of nitrogen
26 hypoxia as the method of execution unless a written election
27 signed by the person is submitted to the warden of the

1 correctional facility not later than 48 hours after the
2 effective date of the act adding this language, or after the
3 warrant is issued, whichever is later.

4 "(c) If electrocution, nitrogen hypoxia, ~~or~~ and
5 lethal injection ~~is~~ are all held to be unconstitutional by the
6 Alabama Supreme Court under the Constitution of Alabama of
7 1901, or held to be unconstitutional by the United States
8 Supreme Court under the United States Constitution, or if the
9 United States Supreme Court declines to review any judgment
10 holding a method of execution to be unconstitutional under the
11 United States Constitution made by the Alabama Supreme Court
12 or the United States Court of Appeals that has jurisdiction
13 over Alabama, then all persons sentenced to death ~~for a~~
14 ~~capital crime~~ shall be executed by any constitutional method
15 of execution based on the sole discretion of the Commissioner
16 of the Department of Corrections.

17 "(d) The provisions of the opinion and all points of
18 law decided by the United States Supreme Court in Malloy v.
19 South Carolina, 237 U.S. 180 (1915), finding that the Ex Post
20 Facto Clause of the United States Constitution is not violated
21 by a legislatively enacted change in the method of execution
22 for a sentence of death validly imposed for previously
23 committed capital murders, are adopted by the Legislature as
24 the law of this state.

25 "(e) A change in the method of execution shall not
26 increase the punishment or modify the penalty of death for
27 capital murder. Any legislative change to the method of

1 execution for the crime of capital murder shall not violate
2 Section 22 of Article I of the Constitution of Alabama of
3 1901.

4 "(f) Notwithstanding any law to the contrary, a
5 person authorized by state law to prescribe medication and
6 designated by the Department of Corrections may prescribe the
7 drug or drugs necessary to compound a lethal injection.
8 Notwithstanding any law to the contrary, a person authorized
9 by state law to prepare, compound, or dispense medication and
10 designated by the Department of Corrections may prepare,
11 compound, or dispense a lethal injection. For purposes of this
12 section, prescription, preparation, compounding, dispensing,
13 and administration of a lethal injection shall not constitute
14 the practice of medicine, nursing, or pharmacy.
15 Notwithstanding any law to the contrary, a person designated
16 by the Department of Corrections to participate in an
17 execution in any capacity shall be exempt from criminal
18 liability for necessary actions taken to carry out the
19 execution.

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

24 "(h) No sentence of death shall be reduced as a
25 result of a determination that a method of execution is
26 declared unconstitutional under the Constitution of Alabama of
27 1901, or the Constitution of the United States. In any case in

1 which an execution method is declared unconstitutional, the
2 death sentence shall remain in force until the sentence can be
3 lawfully executed by any valid method of execution.

4 "(i) Nothing contained in this section is intended
5 to require any physician, nurse, pharmacist, or employee of
6 the Department of Corrections or any other person to assist in
7 any aspect of an execution which is contrary to the person's
8 moral or ethical beliefs."

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

1
2
3 Senate

4 Read for the first time and referred to the Senate
5 committee on Judiciary..... 07-FEB-17
6
7 Read for the second time and placed on the calen-
8 dar with 1 substitute and..... 06-APR-17
9
10 Read for the third time and passed as amended 18-APR-17

11 Yeas 25
12 Nays 8

13
14
15 Patrick Harris,
16 Secretary.
17