

1 SB272
2 190936-1
3 By Senator Pittman
4 RFD: Judiciary
5 First Read: 01-FEB-18

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, a capital defendant may
9 be executed by means of lethal injection or
10 electrocution, upon the election of the defendant.

11 This bill would allow executions by means of
12 nitrogen hypoxia if lethal injection is
13 unavailable.

14 This bill would allow a capital defendant to
15 elect to be executed by means of nitrogen hypoxia.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To amend Sections 15-18-82 and 15-18-82.1, Code of
22 Alabama 1975; to allow executions by means of nitrogen hypoxia
23 if lethal injection is unavailable, to allow for capital
24 defendants to elect to be executed by nitrogen hypoxia.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 "§15-18-82.

2 "(a) Where the sentence of death is pronounced
3 against a convict, the sentence shall be executed at any hour
4 on the day set for the execution, not less than 30 nor more
5 than 100 days from the date of sentence, as the court may
6 adjudge, by lethal injection unless the convict elects
7 execution by electrocution or nitrogen hypoxia as provided by
8 law. If electrocution or nitrogen hypoxia are held
9 unconstitutional, the method of execution shall be lethal
10 injection. If lethal injection is held unconstitutional or
11 otherwise becomes unavailable, the method of execution shall
12 be by nitrogen hypoxia.

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

19 "(c) The warden of the William C. Holman unit of the
20 prison system at Atmore or, in case of his or her death,
21 disability, or absence, his or her deputy, shall be the
22 executioner. In the case of execution by lethal injection, the
23 warden, or in the case of his or her death, disability, or
24 absence, his or her deputy, may designate an employee of the
25 unit to administer the lethal injection. In the event of the
26 death or disability or absence of both the warden and deputy,

1 the executioner shall be that person appointed by the
2 Commissioner of the Department of Corrections.

3 "§15-18-82.1.

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

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

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

1 "(2) The election for death by nitrogen hypoxia is
2 waived unless it is personally made by the person in writing
3 and delivered to the warden of the correctional facility
4 within 30 days after the certificate of judgment pursuant to a
5 decision by the Alabama Supreme Court affirming the sentence
6 of death. If a certificate of judgment is issued before the
7 effective date of the act adding this language, the election
8 must be made and delivered to the warden within 30 days of
9 that date. If a warrant of execution is pending on the
10 effective date of the act adding this language, or if a
11 warrant is issued within 30 days of that date, the person who
12 is the subject of the warrant shall waive election of nitrogen
13 hypoxia as the method of execution unless a written election
14 signed by the person is submitted to the warden of the
15 correctional facility not later than 48 hours after the
16 effective date of the act adding this language, or after the
17 warrant is issued, whichever is later.

18 "(c) If electrocution, nitrogen hypoxia, ~~or~~ and
19 lethal injection ~~is~~ are all held to be unconstitutional by the
20 Alabama Supreme Court under the Constitution of Alabama of
21 1901, or held to be unconstitutional by the United States
22 Supreme Court under the United States Constitution, or if the
23 United States Supreme Court declines to review any judgment
24 holding a method of execution to be unconstitutional under the
25 United States Constitution made by the Alabama Supreme Court
26 or the United States Court of Appeals that has jurisdiction
27 over Alabama, then all persons sentenced to death ~~for a~~

1 ~~capital crime~~ shall be executed by any constitutional method
2 of execution based on the sole discretion of the Commissioner
3 of the Department of Corrections.

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

12 "(e) A change in the method of execution shall not
13 increase the punishment or modify the penalty of death for
14 capital murder. Any legislative change to the method of
15 execution for the crime of capital murder shall not violate
16 Section 22 of Article I of the Constitution of Alabama of
17 1901.

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

1 the practice of medicine, nursing, or pharmacy.
2 Notwithstanding any law to the contrary, a person designated
3 by the Department of Corrections to participate in an
4 execution in any capacity shall be exempt from criminal
5 liability for necessary actions taken to carry out the
6 execution.

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

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

18 "(i) An election for a choice of a method of
19 execution made by a convict shall at no time supersede the
20 means of execution available to the Department of Corrections.

21 "~~(i)~~ (j) Nothing contained in this section is
22 intended to require any physician, nurse, pharmacist, or
23 employee of the Department of Corrections or any other person
24 to assist in any aspect of an execution which is contrary to
25 the person's moral or ethical beliefs."

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