

Bill No. CS/HB 3033, 1st Eng.

Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Burt moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
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16	and insert:		
17	Section 1. Section 922.10, Florida Statutes, is		
18	amended to read:		
19	922.10 Execution of death sentence; executioner.--		
20	(1) A death sentence shall be executed by		
21	electrocution. <u>If electrocution is held to be unconstitutional</u>		
22	<u>by the Florida Supreme Court, the United States Court of</u>		
23	<u>Appeals for the Eleventh Circuit, or the United States Supreme</u>		
24	<u>Court, all persons sentenced to death for a capital crime</u>		
25	<u>shall be executed by lethal injection.</u> The <u>superintendent</u>		
26	warden of the state prison shall designate the executioner.		
27	Information which, if released, would identify the executioner		
28	is confidential and exempt from the provisions of s. 119.07(1)		
29	and s. 24(a), Art. I of the State Constitution. The warrant		
30	authorizing the execution shall be read to the convicted		
31	person immediately before execution.		

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1 (2) 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 statute law of this state.

9 (3) A change in the method of execution does not
10 increase the punishment or modify the statutory penalty of
11 death for capital murder. Any legislative change to the method
12 of execution for the crime of capital murder does not violate
13 s. 10, Art. I, or s. 9, Art. X of the State Constitution.

14 Section 2. This act shall take effect upon becoming a
15 law.

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18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete everything before the enacting clause

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22 and insert:

23 A bill to be entitled
24 An act relating to execution; amending s.
25 922.10, F.S.; providing for execution by means
26 of lethal injection if electrocution is held to
27 be unconstitutional; providing legislative
28 intent; providing an effective date.

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30 WHEREAS, the Legislature finds that the existing method
31 of carrying out a sentence of death in Florida is by

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1 electrocution, and

2 WHEREAS, the Legislature has previously determined that
3 death by electrocution is the preferred method of carrying out
4 the death penalty, and the death penalty should be carried out
5 in a swift and sure manner, and

6 WHEREAS, the Florida Supreme Court, in Jones v.
7 Butterworth, Case No. 90,231 (October 20, 1997), has held
8 death by electrocution to be a constitutional method of
9 imposing the death penalty in Florida, and

10 WHEREAS, the Legislature intends to ensure that the
11 lawful punishment of death imposed on persons in this state is
12 carried out, and considers it to be appropriate to provide an
13 alternative method for imposing death only in the event that
14 the United States Supreme Court, the United States Court of
15 Appeals for the Eleventh Circuit, or the Florida Supreme Court
16 declares death by electrocution to be unconstitutional, and

17 WHEREAS, changing the method of carrying out the death
18 penalty both for those previously sentenced and for those who
19 will be sentenced in the future is merely procedural and does
20 not increase the quantum of punishment imposed upon a
21 defendant and therefore does not violate the prohibition
22 against ex post facto laws under the Constitution of the
23 United States, Malloy v. South Carolina, 237 U.S. 180 (1915),
24 and Ex Parte Kenneth Granviel, 561 S.W.2d 503 (Tex. App.
25 1978), and

26 WHEREAS, in the case of Malloy v. South Carolina, 237
27 U.S. 180 (1915), the United States Supreme Court held that a
28 change in the method of execution does not change the penalty
29 for the crime of murder, but only the method of inducing
30 death, when under such a change some of the odious features
31 incident to the old method are abated by the new method, and

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1 WHEREAS, the Florida Supreme Court has previously
2 declared, in the case of *Dobbert v. State*, 375 So.2d 1069
3 (Fla. 1979), affirmed in *Dobbert v. Florida*, 432 U.S. 282,
4 that changing the practices and procedures of the application
5 of the death penalty statute does not violate the provisions
6 of Article X, Section 9 of the Florida Constitution or the "ex
7 post facto" clauses of the Florida and United States
8 Constitutions, NOW, THEREFORE,
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