

By the Committee on Crime & Punishment and Representatives
Stafford, Heyman, Lacasa and Sanderson

1 A bill to be entitled
2 An act relating to execution of the death
3 sentence; creating s. 922.105, F.S.; providing
4 for execution of the death sentence by means of
5 lethal injection if electrocution is declared
6 invalid by any one of specified courts, unless
7 overruled; providing that a person authorized
8 by state law to prescribe medication, when
9 designated by the Department of Corrections,
10 may prescribe the drugs necessary to compound a
11 lethal injection; providing that a person
12 authorized by state law to prepare, compound,
13 or dispense medication, when designated by the
14 Department of Corrections, may prepare,
15 compound, or dispense the lethal injection;
16 providing that the prescription, preparation,
17 compounding, dispensing, or administration of a
18 lethal injection does not constitute practicing
19 medicine, nursing, or pharmacy; providing for
20 execution of the death sentence by other means
21 not declared unconstitutional by the United
22 States Supreme Court, if lethal injection is
23 declared invalid; providing for determination
24 and supervision of execution procedure by the
25 Secretary of Corrections or the secretary's
26 designee, under specified circumstances when
27 execution by means of electrocution or lethal
28 injection has been declared invalid; providing
29 an exemption from ch. 120, F.S., for the
30 policies and procedures of the Department of
31 Corrections for execution; prohibiting

1 reduction of a sentence of death as the result
2 of a method of execution being declared
3 invalid; providing an effective date.
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5 WHEREAS, the existing method of carrying out a sentence
6 of death in this state is by electrocution, and

7 WHEREAS, the Legislature has previously determined that
8 death by electrocution is the preferred method of carrying out
9 the death penalty, and the death penalty should be carried out
10 in a swift and sure manner, and

11 WHEREAS, the Florida Supreme Court, in Jones v. State,
12 701 So.2d 76, has held death by electrocution to be a
13 constitutional method of imposing the death penalty in this
14 state, and

15 WHEREAS, the Legislature intends to ensure that the
16 lawful punishment of death imposed on persons in this state is
17 carried out, and considers it to be appropriate to provide
18 alternative methods for imposing death only if legally
19 required to do so, and

20 WHEREAS, changing the method of carrying out the death
21 penalty both for those previously sentenced and for those who
22 will be sentenced in the future is merely procedural and does
23 not increase the quantum of punishment imposed upon a
24 defendant and therefore does not violate the prohibition
25 against ex post facto laws under the Constitution of the
26 United States, Malloy v. South Carolina, 237 U.S. 180 (1915),
27 and Ex Parte Kenneth Granviel, 561 S.W.2d 503 (Tex. App.
28 1978), and

29 WHEREAS, the United States Supreme Court has previously
30 declared, in the case of Dobbert v. Florida, 432 U.S. 282
31 (1977), that changing the practices and procedures of the

1 application of the death penalty statute does not violate the
2 ex post facto clauses of the State Constitution or the
3 Constitution of the United States, and

4 WHEREAS, the Florida Supreme Court has previously held
5 a claim under Article X, Section 9 of the State Constitution
6 against retroactive changes in death penalty procedures to be
7 without merit, in the case of *Dobbert v. State*, 375 So.2d 1069
8 (Fla. 1979), NOW, THEREFORE,

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10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Section 922.105, Florida Statutes, is
13 created to read:

14 922.105 Execution of death sentence by lethal
15 injection or other method of execution if death by
16 electrocution is declared invalid; prohibition against
17 reduction of death sentence as a result of determination that
18 a method of execution is invalid.--

19 (1) If death by electrocution pursuant to s. 922.10 is
20 declared invalid by the Florida Supreme Court, the United
21 States Supreme Court, or a final decision of the United States
22 Court of Appeal, Eleventh Circuit, unless overruled in any
23 manner, then the method of execution shall be by lethal
24 injection of a substance or substances in lethal quantity
25 sufficient to cause death. The execution procedure is to be
26 determined and supervised by the Secretary of Corrections or
27 the secretary's designee.

28 (2) Notwithstanding any law to the contrary, a
29 person authorized by state law to prescribe medication and
30 designated by the Department of Corrections may prescribe the
31 drug or drugs necessary to compound a lethal injection.

1 Notwithstanding any law to the contrary, a person authorized
2 by state law to prepare, compound, or dispense medication and
3 designated by the Department of Corrections may prepare,
4 compound, or dispense a lethal injection. For purposes of
5 this section, prescription, preparation, compounding,
6 dispensing, and administration of a lethal injection does not
7 constitute the practice of medicine, nursing, or pharmacy.

8 (3) If the imposition of death by lethal injection is
9 declared invalid by the Florida Supreme Court, the United
10 States Supreme Court, or a final decision of the United States
11 Court of Appeal, Eleventh Circuit, unless overruled in any
12 manner, then the method of execution in that case shall be
13 carried out by any other method of execution not declared
14 unconstitutional by the United States Supreme Court. The
15 execution procedure for imposing a death sentence pursuant to
16 this subsection is to be determined and supervised by the
17 Secretary of Corrections or the secretary's designee.

18 (4) The policies and procedures of the Department of
19 Corrections for execution of persons sentenced to death shall
20 be exempt from chapter 120.

21 (5) No sentence of death shall be reduced as a result
22 of a determination that a method of execution is invalid under
23 the State Constitution or the Constitution of the United
24 States. In any case in which an execution method is declared
25 invalid, the death sentence shall remain in force until the
26 sentence can be lawfully executed by any valid method of
27 execution.

28 Section 2. This act shall take effect upon becoming a
29 law.

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