

By Senator Klein

28-516-98

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

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

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

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

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

WHEREAS, changing the method of carrying out the death
penalty both for those previously sentenced and for those who
will be sentenced in the future is merely procedural and does
not increase the quantum of punishment imposed upon a
defendant and therefore does not violate the prohibition
against ex post facto laws under the Constitution of the
United States, Malloy v. South Carolina, 237 U.S. 180 (1915),

1 and Ex Parte Kenneth Granviel, 561 S.W.2d 503 (Tex. App.
2 1978), and

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

9 WHEREAS, the Florida Supreme Court has previously
10 declared, in the case of Dobbert v. State, 375 So.2d 1069
11 (Fla. 1979), affirmed in Dobbert v. Florida, 432 U.S. 282,
12 that changing the practices and procedures of the application
13 of the death penalty statute does not violate the provisions
14 of Article X, Section 9 of the Florida Constitution or the "ex
15 post facto" clauses of the Florida and United States
16 Constitutions, NOW, THEREFORE,

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

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20 Section 1. Section 922.10, Florida Statutes, is
21 amended to read:

22 922.10 Execution of death sentence; executioner.--A
23 death sentence shall be executed by electrocution. If
24 electrocution is held to be unconstitutional by the Florida
25 Supreme Court or the United States Supreme Court, all persons
26 sentenced to death for a capital crime shall be executed by
27 lethal injection.The superintendent ~~warden~~ of the state
28 prison shall designate the executioner. Information which, if
29 released, would identify the executioner is confidential and
30 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
31 I of the State Constitution. The warrant authorizing the

1 execution shall be read to the convicted person immediately
2 before execution.

3 Section 2. This act shall take effect upon becoming a
4 law.

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7 SENATE SUMMARY

8 Provides for the execution of the death penalty by means
9 of lethal injection if electrocution is held to be
10 unconstitutional by the Florida Supreme Court or the
11 United States Supreme Court.

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