

By Senators Brown-Waite, Burt, Klein, Silver, Campbell,
Bronson and Horne

41-768A-00

1 A bill to be entitled
2 An act relating to the execution of the death
3 sentence; amending ss. 922.10, 922.105, F.S.;
4 providing for the death sentence to be executed
5 by lethal injection; providing for a person who
6 is sentenced to death to elect a death sentence
7 executed by electrocution; providing a
8 procedure for making such election; providing
9 for a person whose warrant of execution is
10 pending on a specified date to elect a sentence
11 of death by electrocution; providing a
12 procedure for making such election; amending s.
13 27.702, F.S.; providing an effective date.

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

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17 Section 1. Section 922.10, Florida Statutes, is
18 amended to read:

19 922.10 Execution of death sentence; executioner.--A
20 death sentence shall be executed by electrocution or lethal
21 injection in accordance with s. 922.105. The warden of the
22 state prison shall designate the executioner. Information
23 which, if released, would identify the executioner is
24 confidential and exempt from the provisions of s. 119.07(1)
25 and s. 24(a), Art. I of the State Constitution. The warrant
26 authorizing the execution shall be read to the convicted
27 person immediately before execution.

28 Section 2. Section 922.105, Florida Statutes, is
29 amended to read:

30 922.105 Execution of death sentence ~~by lethal~~
31 ~~injection if death by electrocution is declared~~

1 ~~unconstitutional~~; prohibition against reduction of death
2 sentence as a result of determination that a method of
3 execution is unconstitutional.--

4 (1) A death sentence shall be executed by lethal
5 injection, unless the person sentenced to death affirmatively
6 elects to be executed by electrocution. The sentence shall be
7 executed under the direction of the Secretary of Corrections
8 or the secretary's designee pursuant to s. 922.10.

9 (2) A person convicted and sentenced to death for a
10 capital crime at any time shall have one opportunity to elect
11 that his or her death sentence be executed by electrocution.
12 The election for death by electrocution is waived unless it is
13 personally made by the person in writing and delivered to the
14 warden of the correctional facility within 30 days after the
15 issuance of mandate pursuant to a decision by the Florida
16 Supreme Court affirming the sentence of death or, if mandate
17 issued before the effective date of this act, the election
18 must be made and delivered to the warden within 30 days after
19 the effective date of this act. If a warrant of execution is
20 pending on the effective date of this act, or if a warrant is
21 issued within 30 days after the effective date of this act,
22 the person sentenced to death who is the subject of the
23 warrant shall have waived election of electrocution as the
24 method of execution unless a written election signed by the
25 person is submitted to the warden of the correctional facility
26 no later than 48 hours after a new date for execution of the
27 death sentence is set by the Governor under s. 922.06.

28 (3) If electrocution or lethal injection is held to be
29 unconstitutional by the Florida Supreme Court under the State
30 Constitution, or held to be unconstitutional by the United
31 States Supreme Court under the United States Constitution, or

1 if the United States Supreme Court declines to review any
2 judgment holding a method of execution ~~electrocution~~ to be
3 unconstitutional under the United States Constitution made by
4 the Florida Supreme Court or the United States Court of
5 Appeals that has jurisdiction over Florida, all persons
6 sentenced to death for a capital crime shall be executed by
7 any constitutional method of execution ~~lethal injection~~.

8 ~~(4)(2)~~ The provisions of the opinion and all points of
9 law decided by the United States Supreme Court in Malloy v.
10 South Carolina, 237 U.S. 180 (1915), finding that the Ex Post
11 Facto Clause of the United States Constitution is not violated
12 by a legislatively enacted change in the method of execution
13 for a sentence of death validly imposed for previously
14 committed capital murders, are adopted by the Legislature as
15 the law of this state.

16 ~~(5)(3)~~ A change in the method of execution does not
17 increase the punishment or modify the penalty of death for
18 capital murder. Any legislative change to the method of
19 execution for the crime of capital murder does not violate s.
20 10, Art. I or s. 9, Art. X of the State Constitution.

21 ~~(6)(4)~~ Notwithstanding any law to the contrary, a
22 person authorized by state law to prescribe medication and
23 designated by the Department of Corrections may prescribe the
24 drug or drugs necessary to compound a lethal injection.
25 Notwithstanding any law to the contrary, a person authorized
26 by state law to prepare, compound, or dispense medication and
27 designated by the Department of Corrections may prepare,
28 compound, or dispense a lethal injection. Notwithstanding
29 chapter 401, chapter 458, chapter 459, chapter 464, chapter
30 465, or any other law to the contrary, for purposes of this
31 section, prescription, preparation, compounding, dispensing,

1 and administration of a lethal injection does not constitute
2 the practice of medicine, nursing, or pharmacy.

3 (7)~~(5)~~ The policies and procedures of the Department
4 of Corrections for execution of persons sentenced to death
5 shall be exempt from chapter 120.

6 (8)~~(6)~~ Notwithstanding s. 775.082(2), s. 775.15(1)(a),
7 or s. 790.161(4), or any other provision to the contrary, no
8 sentence of death shall be reduced as a result of a
9 determination that a method of execution is declared
10 unconstitutional under the State Constitution or the
11 Constitution of the United States. In any case in which an
12 execution method is declared unconstitutional, the death
13 sentence shall remain in force until the sentence can be
14 lawfully executed by any valid method of execution.

15 (9)~~(7)~~ Nothing contained in this chapter is intended
16 to require any physician, nurse, pharmacist, or employee of
17 the Department of Corrections or any other person to assist in
18 any aspect of an execution which is contrary to the person's
19 moral or ethical beliefs.

20 Section 3. This act shall take effect upon becoming a
21 law.

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24 SENATE SUMMARY

25 Provides for a death sentence to be executed by lethal
26 injection rather than by electrocution unless the person
27 who is sentenced to death elects death by electrocution.
28 Requires that such election be made within 30 days after
29 the Florida Supreme Court affirms the sentence of death.
30 Provides for a person whose warrant of execution is
31 pending on the effective date of the act to elect death
by electrocution by making such election within 48 hours
after the Governor sets a date for execution.