~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 5, 2021

**S. 200**

Introduced by Senators Hembree, Martin, Kimbrell, Shealy, Gustafson and Turner

S. Printed 5/5/21--H.

Read the first time March 4, 2021.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill provides that a person who has been convicted of a capital crime and given the death penalty may choose as his means of death as electrocution or, if it is available at the time of election, lethal injection. However, should the convict waive his right of election as to the method of death, or should execution by lethal injection be unavailable or held to be unconstitutional, the South Carolina Department of Corrections (SCDC) may administer the death penalty via electrocution unless the convicted person elects death by firing squad. The bill also provides that the death penalty election of a convicted person who receives a stay of execution or whose execution date has passed will expire and must be renewed in writing fourteen days before a new execution date is established. The director of the South Carolina Department of Corrections (SCDC) must determine and certify under penalty of perjury to the Supreme Court whether the method selected is available.

**Department of Corrections.** This bill requires that a person in South Carolina who is convicted of a capital crime and sentenced to death may opt to receive death by electrocution or, when the appropriate drugs are available, death by lethal injection. If the convict waives the right of election as to the method of death, the penalty must be administered by electrocution.

As the drugs used for lethal injections are no longer readily available, general pricing for these drugs cannot be obtained; this renders the department unable to generate an estimate of cost savings that may be realized by the implementation of the bill. However, as there have been no death row executions in South Carolina since 2011, the department estimates the cost savings associated with administering death by electrocution versus death by lethal injection to be negligible.

**Introduced on January 12, 2021**

**State Expenditure**

This bill provides that a person who has been convicted of a capital crime and given the death penalty may choose as his means of death electrocution or, if it is available at the time of election, lethal injection. The bill also provides that the death penalty election of a convicted person who receives a stay of execution or whose execution date has passed will expire and must be renewed in writing fourteen days before a new execution date is established. The director of the South Carolina Department of Corrections (SCDC) must determine and certify under penalty of perjury to the Supreme Court whether the method selected is available. Persons convicted of a capital crime and sentenced to death prior to the effective date of the bill will be required to sign and date a form that must be witnessed by two persons not in the custody of SCDC and must be notarized.

**Department of Corrections.** The expenditure impact of this bill is pending, contingent upon a response from the department.

**Updated for Additional Agency Response**

**Introduced on January 12, 2021**

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**Department of Corrections.** The expenditure impact of this bill is pending, contingent upon a response from the department.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 24‑3‑530 OF THE 1976 CODE, RELATING TO DEATH BY ELECTROCUTION OR LETHAL INJECTION, TO PROVIDE THAT A PERSON SENTENCED TO DEATH MAY ELECT FOR ELECTROCUTION OR LETHAL INJECTION IF LETHAL INJECTION IS AVAILABLE AT THE TIME OF ELECTION, TO PROVIDE THAT AN ELECTION EXPIRES AND MUST BE RENEWED IN WRITING IF THE CONVICTED PERSON RECEIVES A STAY OF EXECUTION OR THE EXECUTION DATE HAS PASSED, TO PROVIDE THAT A PENALTY MUST BE ADMINISTERED BY ELECTROCUTION FOR A PERSON WHO WAIVES HIS RIGHT OF ELECTION, TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS DIRECTOR SHALL DETERMINE AND CERTIFY TO THE SUPREME COURT WHETHER THE METHOD SELECTED IS AVAILABLE, TO PROVIDE THAT A CONVICTED PERSON’S SIGNATURE MUST BE WITNESSED, AND TO PROVIDE THAT THE MANNER OF INFLICTING A DEATH SENTENCE MUST BE ELECTROCUTION REGARDLESS OF THE METHOD ELECTED BY THE PERSON IF EXECUTION BY LETHAL INJECTION IS UNAVAILABLE OR IS HELD TO BE UNCONSTITUTIONAL BY AN APPELLATE COURT OF COMPETENT JURISDICTION.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24‑3‑530 of the 1976 Code is amended to read:

“Section 24‑3‑530. (A) A person convicted of a capital crime and having imposed upon him the sentence of death shall suffer the penalty by electrocution or, at the election of the convicted person, by firing squad or lethal injection, if it is available at the time of election, under the direction of the Director of the Department of Corrections. The election for death by electrocution, firing squad, or lethal injection must be made in writing fourteen days before ~~the~~ each execution date or it is waived. If the convicted person receives a stay of execution or the execution date has passed for any reason, then the election expires and must be renewed in writing fourteen days before a new execution date. If the convicted person waives the right of election, then the penalty must be administered by ~~lethal injection~~ electrocution.

(B) Upon receipt of the notice of execution, the Director of the Department of Corrections shall determine and certify by affidavit under penalty of perjury to the Supreme Court whether the methods provided in subsection (A) are available.

(C) A person convicted of a capital crime and sentenced to death by electrocution prior to the effective date of this section must be administered death by electrocution unless the person elects death by firing squad or lethal injection, if it is available, in writing fourteen days before the execution date.

~~(C)~~(D) If execution by lethal injection under this section is determined and certified pursuant to subsection (B) to be unavailable by the Director of the Department of Corrections or is held to be unconstitutional by an appellate court of competent jurisdiction, then the manner of inflicting a death sentence must be by electrocution, unless the convicted person elects death by firing squad.

(E) The Department of Corrections must provide written notice to a convicted person of his right to election under this section and the available methods.

(F) The Department of Corrections shall establish protocols and procedures for carrying out executions pursuant to this section.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor and applies to persons sentenced to death as provided by law prior to and after the effective date of this act.

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