

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 89

Short Title: Legislative Commission on Lethal Injection. (Public)

Sponsors: Senators Kinnaird; Atwater, Cowell, Dannelly, Dorsett, Graham, Malone, Nesbitt, Purcell, and Shaw.

Referred to: Rules and Operations of the Senate.

February 12, 2007

A BILL TO BE ENTITLED

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2 AN ACT TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON
3 LETHAL INJECTION AND TO DELAY THE SETTING OF EXECUTIONS FOR
4 A DEFINITE PERIOD UNTIL THE STUDY IS COMPLETED.

5 Whereas, North Carolina law does not address the means by which the mode
6 of executing a death sentence through lethal injection is administered; and

7 Whereas, North Carolina utilizes the same procedure as Florida; and

8 Whereas, on December 13, 2006, the execution of a prisoner in Florida by
9 lethal injection caused severe pain to the prisoner, and the medical examiner in Florida
10 indicated that the lethal injection protocols need to be reviewed to determine if existing
11 protocols should be modified or additional protocols added; and

12 Whereas, Dr. Jay Chapman, the forensic pathologist who devised the lethal
13 injection protocol, no longer recommends the three-drug protocol used in North
14 Carolina; and

15 Whereas, Dr. Mark Dershwitz, a professor of anesthesiology at the University
16 of Massachusetts, has advised that other methods of lethal injection exist; and

17 Whereas, other states that used this protocol have stayed executions pending a
18 study of alternative means, including Florida, Maryland, and California; and

19 Whereas, as a matter of humanity, constitutional imperative, and common
20 sense, if our State is going to execute persons convicted of capital crimes, it must do so
21 in a manner that comports with medical procedures and with the United States and
22 North Carolina constitutions; Now, therefore,

23 The General Assembly of North Carolina enacts:

24 **SECTION 1.(a)** There is created the Legislative Study Commission on
25 Lethal Injection. The Commission shall consist of 15 members appointed as follows:

26 (1) Five Senators appointed by the President Pro Tempore of the Senate.

27 (2) Five Representatives appointed by the Speaker of the House of
28 Representatives.

1 (3) Five members from the State's medical community appointed by the
2 Governor.

3 **SECTION 1.(b)** The Legislative Study Commission on Lethal Injection
4 shall consider the way that North Carolina uses lethal injection for executions and shall
5 review the State's lethal injection protocols to determine whether they are medically
6 sound. In its study, the Commission may consider the protocol regarding who
7 administers the drugs, how much of each chemical should be used, how prison officials
8 should proceed if an inmate's veins are too compromised to receive injections, and any
9 other appropriate or relevant subject.

10 **SECTION 1.(c)** The Speaker of the House of Representatives shall appoint a
11 cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the
12 Commission. The Commission may meet at any time upon the joint call of the cochairs.
13 Vacancies on the Commission shall be filled by the same appointing authority as made
14 the initial appointment.

15 The Commission, while in the discharge of its official duties, may exercise all
16 powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The
17 Commission may contract for professional, clerical, or consultant services as provided
18 by G.S. 120-32.02.

19 Subject to the approval of the Legislative Services Commission, the
20 Commission may meet in the Legislative Building or the Legislative Office Building.
21 The Legislative Services Commission, through the Legislative Services Officer, shall
22 assign professional staff to assist the Commission in its work. The House of
23 Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff
24 to the Commission, and the expenses relating to the clerical employees shall be borne
25 by the Commission. Members of the Commission shall receive subsistence and travel
26 expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

27 **SECTION 1.(d)** The Legislative Study Commission on Lethal Injection
28 shall submit an interim report to the 2008 Regular Session of the 2007 General
29 Assembly on the Commission's findings and recommendations, which may include any
30 statutory changes necessary to implement the recommendations. The Commission shall
31 make a final report to the 2009 General Assembly and shall terminate upon the earlier
32 of the filing of its final report or the convening of the 2009 General Assembly.

33 **SECTION 1.(e)** There is appropriated from the General Fund to the General
34 Assembly the sum of fifty thousand dollars (\$50,000) for the 2007-2008 fiscal year and
35 the sum of fifty thousand dollars (\$50,000) for the 2008-2009 fiscal year to be used by
36 the Legislative Services Commission for the expenses of the Legislative Study
37 Commission on Lethal Injection established by this section.

38 **SECTION 2.** Notwithstanding the provisions of G.S. 15-194, or any other
39 provision of State law, the Secretary of Correction shall not set any date prior to June 1,
40 2009, for the execution for any person that has been sentenced to death under State law.

41 **SECTION 3.** Notwithstanding Section 2 of this act, nothing in this act shall
42 prevent the prosecution of capital cases at trial or appeal nor the imposition of a
43 sentence of death during the period of the study.

44 **SECTION 4.** This act is effective when it becomes law.