

1 SB237  
2 173657-1  
3 By Senators Brewbaker, Hightower, Whatley, Stutts, Marsh,  
4 Reed, Ward, Smitherman and Figures  
5 RFD: Judiciary  
6 First Read: 16-FEB-16

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8 SYNOPSIS: This bill would create the Alabama Innocence  
9 Inquiry Commission within the Administrative Office  
10 of Courts and would provide for the duties and  
11 functions of the commission.

12 This bill would establish a procedure by  
13 which a person convicted of a felony could petition  
14 for a hearing before the commission in order to  
15 present credible, verifiable evidence of innocence  
16 that has not previously been presented at trial or  
17 considered at a hearing granted through  
18 postconviction relief.

19 This bill would authorize the commission to  
20 hear the evidence and, at its discretion, refer the  
21 case back to the court of original jurisdiction for  
22 additional judicial review.

23 This bill would specify that there is a  
24 moratorium on executions until June 1, 2017.

25  
26 A BILL  
27 TO BE ENTITLED

1 AN ACT

2  
3 To create the Alabama Innocence Inquiry Commission  
4 within the Administrative Office of Courts; to provide for the  
5 duties and functions of the commission; to authorize the  
6 commission to order judicial review of certain cases in which  
7 there is found to exist credible, verifiable evidence of  
8 innocence that has not previously been presented at trial or  
9 considered at a hearing granted through postconviction relief;  
10 and to provide for a moratorium on certain executions.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. There is established the Alabama  
13 Innocence Inquiry Commission. The commission shall be an  
14 independent commission under the Administrative Office of  
15 Courts for administrative purposes. The Administrative Office  
16 of Courts shall provide administrative support to the  
17 commission as needed. The Director of the Administrative  
18 Office of Courts shall not reduce or modify the budget of the  
19 commission or use funds appropriated to the commission without  
20 the approval of the commission.

21 Section 2. For purposes of this act, the following  
22 words have the following meanings:

23 (1) CLAIMANT. A person asserting that he or she is  
24 completely innocent of any criminal responsibility for a  
25 felony crime upon which the person was convicted.

26 (2) CLAIM OF FACTUAL INNOCENCE. A claim on behalf of  
27 a living person convicted of a felony in Alabama, asserting

1 the complete innocence of any criminal responsibility for the  
2 felony for which the person was convicted relating to the  
3 crime, and for which there is some credible, verifiable  
4 evidence of innocence that has not previously been presented  
5 at trial or considered at an evidentiary hearing granted  
6 through postconviction relief.

7 (3) COMMISSION. The Alabama Innocence Inquiry  
8 Commission established by this act.

9 (4) DIRECTOR. The Director of the Alabama Innocence  
10 Inquiry Commission.

11 (5) VICTIM. The victim of the crime, or if the  
12 victim of the crime is deceased, the next of kin of the  
13 victim.

14 Section 3. This act establishes an extraordinary  
15 procedure to investigate and determine credible claims of  
16 factual innocence that shall require an individual to  
17 voluntarily waive rights and privileges as described in this  
18 act.

19 Section 4. (a) The commission shall consist of eight  
20 voting members as follows:

21 (1) One circuit court judge appointed by the Circuit  
22 Judges Association.

23 (2) One district attorney appointed by the District  
24 Attorneys Association.

25 (3) One victim advocate appointed by the Governor.

1           (4) One person engaged in the practice of criminal  
2 defense law appointed by the Alabama Criminal Defense Lawyers  
3 Association.

4           (5) One member of the public who is not an attorney  
5 and who is not an officer or employee of the judicial branch  
6 of government appointed by the Governor.

7           (6) One sheriff appointed by the Alabama Sheriffs  
8 Association.

9           (7) One member appointed by the President Pro  
10 Tempore of the Senate.

11           (8) One member appointed by the Speaker of the House  
12 of Representatives.

13           (b) To the extent possible, the makeup of the  
14 commission shall be inclusive and reflect the racial, gender,  
15 geographic, urban/rural, and economic diversity of the state.

16           (c) The circuit court judge who is appointed as a  
17 member under subsection (a) shall serve as chair of the  
18 commission. The commission shall have its initial meeting no  
19 later than 30 days after the effective date of this act, at  
20 the call of the chair. The commission shall meet a minimum of  
21 once every six months and may also meet more often at the call  
22 of the chair. The commission shall meet at such time and place  
23 as designated by the chair. A majority of the members shall  
24 constitute a quorum.

25           (d) Each member shall be appointed to a term of  
26 three years. Members serving by virtue of elective or  
27 appointed office may serve only so long as they hold those

1        respective offices. Vacancies occurring before the expiration  
2        of a term shall be filled in the manner provided for the  
3        members first appointed.

4                Section 5. The members of the commission, while  
5        engaged in the performance of their duties outside the  
6        counties of their residence or in attending meetings of the  
7        commission, shall be reimbursed as authorized by law for per  
8        diem and mileage as provided by Article 2 of Chapter 7 of  
9        Title 36, Code of Alabama 1975.

10               Section 6. (a) The commission shall employ a  
11        director. The director shall be an attorney licensed to  
12        practice in the state at the time of appointment and at all  
13        times during service as director. The director shall assist  
14        the commission in developing rules and standards for cases  
15        accepted for review, coordinate investigation of cases  
16        accepted for review, maintain records for all case  
17        investigations, prepare reports outlining commission  
18        investigations and recommendations to the trial court, and  
19        apply for and accept on behalf of the commission any funds  
20        that may become available from government grants, private  
21        gifts, donations, or devises from any source.

22               (b) Subject to the approval of the chair, the  
23        director may employ such other staff and may contract for  
24        services as is necessary to assist the commission in the  
25        performance of its duties, and as funds permit.

26               (c) The commission may meet in an area provided by  
27        the Director of the Administrative Office of Courts. The

1 Director of the Administrative Office of Courts shall provide  
2 office space for the commission and the commission staff.

3 Section 7. The commission shall have the following  
4 duties and powers:

5 (1) To establish the criteria and screening process  
6 to be used to determine which cases shall be accepted for  
7 review.

8 (2) To conduct inquiries into claims of factual  
9 innocence, with priority to be given to those cases in which  
10 the convicted person is currently incarcerated solely for the  
11 crime for which he or she claims factual innocence.

12 (3) To coordinate the investigation of cases  
13 accepted for review.

14 (4) To maintain records for all case investigations.

15 (5) To prepare written reports outlining  
16 investigations and recommendations of the commission to the  
17 trial court at the completion of each inquiry.

18 (6) To apply for and accept any funds that may  
19 become available for the commission's work from government  
20 grants, private gifts, donations, or devises from any source.

21 Section 8. (a) A claim of factual innocence may be  
22 referred to the commission by any court, a state or local  
23 government agency, a claimant, or a claimant's counsel. The  
24 commission may not consider a claim of factual innocence if  
25 the convicted person is deceased. The determination of whether  
26 to grant a formal inquiry regarding any other claim of factual  
27 innocence is in the discretion of the commission. The

1 commission may informally screen and dismiss a case summarily  
2 at its discretion.

3 (b) No formal inquiry into a claim of innocence  
4 shall be made by the commission unless the director or the  
5 director's designee first obtains a signed agreement from the  
6 convicted person in which the convicted person waives his or  
7 her procedural safeguards and privileges, agrees to cooperate  
8 with the commission, and agrees to provide full disclosure  
9 regarding all inquiry requirements of the commission. The  
10 waiver under this subsection does not apply to matters  
11 unrelated to a convicted person's claim of innocence. The  
12 convicted person shall have the right to advice of counsel  
13 prior to the execution of the agreement and, if a formal  
14 inquiry is granted, throughout the formal inquiry. If counsel  
15 represents the convicted person, then the convicted person's  
16 counsel must be present at the signing of the agreement. If  
17 counsel does not represent the convicted person, the chair of  
18 the commission shall determine the convicted person's  
19 indigency status and, if appropriate, enter an order for the  
20 appointment of counsel for the purpose of advising on the  
21 agreement.

22 (c) If a formal inquiry regarding a claim of factual  
23 innocence is granted, the director shall use all due diligence  
24 to notify the victim in the case and explain the inquiry  
25 process. The commission shall give the victim notice that the  
26 victim has the right to present his or her views and concerns  
27 throughout the commission's investigation.



1 (d) The commission may subpoena information  
2 necessary to its inquiry. The commission may also do any of  
3 the following: Issue process to compel the attendance of  
4 witnesses and the production of evidence, administer oaths,  
5 petition the Circuit Court of Montgomery County or of original  
6 jurisdiction for enforcement of process or for other relief,  
7 and prescribe its own rules of procedure. All challenges with  
8 regard to the commission's authority or the commission's  
9 access to evidence shall be heard by the chair of the  
10 commission in his or her judicial capacity.

11 (e) While performing duties for the commission, the  
12 director or the director's designee may serve subpoenas or  
13 other process issued by the commission throughout the state in  
14 the same manner and with the same effect as an officer  
15 authorized to serve process of the circuit courts.

16 (f) All state discovery and disclosure statutes in  
17 effect at the time of formal inquiry shall be enforceable as  
18 if the convicted person were currently being tried for the  
19 charge for which the convicted person is claiming innocence.

20 (g) If, at any point during an inquiry, the  
21 convicted person refuses to comply with requests of the  
22 commission or is otherwise deemed to be uncooperative by the  
23 commission, the commission shall discontinue the inquiry.

24 Section 9. (a) At the completion of a formal  
25 inquiry, all relevant evidence shall be presented to the full  
26 commission. As part of its proceedings, the commission may  
27 conduct public hearings. The determination as to whether to

1       conduct public hearings is solely in the discretion of the  
2       commission. Any public hearing held in accordance with this  
3       section shall be subject to the rules of operation of the  
4       commission.

5               (b) The commission may compel the testimony of any  
6       witness. If a witness asserts his or her privilege against  
7       self-incrimination in a proceeding under this act, the chair  
8       of the commission, in his or her judicial capacity, may order  
9       the witness to testify or produce other information if the  
10      chair first determines that the testimony of the witness will  
11      likely be material to reach a correct factual determination in  
12      the case at hand. The chair of the commission shall not order  
13      the witness to testify or produce other information that would  
14      incriminate the witness in the prosecution of any offense  
15      other than an offense for which the witness is granted  
16      immunity under this subsection. The order shall prevent a  
17      prosecutor from using the compelled testimony, or evidence  
18      derived therefrom, to prosecute the witness for previous false  
19      statements made under oath by the witness in prior  
20      proceedings. The prosecutor has a right to be heard by the  
21      commission chair prior to the chair issuing the order. Once  
22      granted, the immunity shall apply throughout all proceedings  
23      conducted pursuant to this act. The limited immunity granted  
24      under this section shall not prohibit prosecution of  
25      statements made under oath that are unrelated to the  
26      commission's formal inquiry, false statements made under oath

1 during proceedings under this act, or prosecution for any  
2 other crimes.

3 (c) The Alabama Innocence Inquiry Commission shall  
4 require, as part of its rules of operation, the holding of a  
5 prehearing conference at least 10 days prior to any proceeding  
6 of the full commission. Only the following persons shall be  
7 notified and authorized to attend the prehearing conference:  
8 The district attorney, or the district attorney's designee, of  
9 the district where the claimant was convicted of the felony  
10 upon which the claim of factual innocence is based; the  
11 counsel of the plaintiff, if any; the chair; the director of  
12 the commission; and any commission staff designated by the  
13 director. The district attorney, or designee, shall be  
14 provided with both an opportunity to inspect any evidence that  
15 may be presented to the commission that has not previously  
16 been presented to any judicial officer or body and with any  
17 information that he or she deems relevant to the proceedings.  
18 Prior to any commission proceedings, the district attorney or  
19 designee is authorized to provide the commission with a  
20 written statement, which shall be included in the record of  
21 the commission's proceedings. Any statement included in the  
22 record shall be part of the commission's record of proceedings  
23 pursuant to subsection (g).

24 (d) The director shall use all due diligence to  
25 notify the victim at least 30 days prior to any proceedings of  
26 the full commission held in regard to the victim's case. The  
27 commission shall notify the victim that the victim is

1 permitted to attend proceedings otherwise closed to the  
2 public, subject to any limitations imposed by this act. If the  
3 victim plans to attend proceedings otherwise closed to the  
4 public, the victim shall notify the commission at least 10  
5 days in advance of the proceedings of his or her intent to  
6 attend.

7 (e) After hearing the evidence, the full commission  
8 shall vote to establish further case disposition as provided  
9 by this subsection. All eight voting members of the commission  
10 shall participate in that vote. Except in cases where the  
11 convicted person entered and was convicted on a plea of  
12 guilty, if five or more of the eight voting members of the  
13 commission conclude there is sufficient evidence of factual  
14 innocence to merit judicial review, the case shall be referred  
15 to the presiding judge of the circuit court in the circuit of  
16 original jurisdiction by filing with the clerk of the circuit  
17 court the opinion of the commission with supporting findings  
18 of fact, as well as the record in support of such opinion,  
19 with service on the district attorney in noncapital cases and  
20 service on both the district attorney and Attorney General in  
21 capital cases. In cases where the convicted person entered and  
22 was convicted on a plea of guilty, if all of the eight voting  
23 members of the commission conclude there is sufficient  
24 evidence of factual innocence to merit judicial review, the  
25 case shall be referred to the presiding circuit court judge in  
26 the district of original jurisdiction. If less than five of  
27 the eight voting members of the commission, or in cases where

1 the convicted person entered and was convicted on a guilty  
2 plea less than all of the eight voting members of the  
3 commission, conclude there is sufficient evidence of factual  
4 innocence to merit judicial review, the commission shall  
5 conclude there is insufficient evidence of factual innocence  
6 to merit judicial review. The commission shall document that  
7 opinion, along with supporting findings of fact, and file  
8 those documents and supporting materials with the clerk of the  
9 circuit court of the original jurisdiction, with a copy to the  
10 district attorney and the presiding judge of the circuit  
11 court. The director shall use all due diligence to notify  
12 immediately the victim of the commission's conclusion in a  
13 case.

14 (f) Evidence of criminal acts, professional  
15 misconduct, or other wrongdoing disclosed through formal  
16 inquiry or commission proceedings shall be referred to the  
17 appropriate authority. Evidence favorable to the convicted  
18 person disclosed through formal inquiry or commission  
19 proceedings shall be disclosed to the convicted person and the  
20 convicted person's counsel, if the convicted person has  
21 counsel.

22 (g) All commission member votes shall be recorded in  
23 the record. All records and proceedings of the commission are  
24 confidential and are exempt from public record and public  
25 meeting laws except that the supporting records for the  
26 commission's conclusion that there is sufficient evidence of  
27 factual innocence to merit judicial review, including all

1 files and materials considered by the commission shall become  
2 public at the time of referral to the circuit court.

3 Commission records for conclusions of insufficient evidence of  
4 factual innocence to merit judicial review shall remain  
5 confidential, except as provided in subsection (e).

6 Section 10. (a) If the commission concludes there is  
7 sufficient evidence of factual innocence to merit judicial  
8 review, the chair shall request the Chief Justice of the  
9 Alabama Supreme Court to appoint a three-judge panel, not to  
10 include any trial judge who has had substantial previous  
11 involvement in the case, and issue commissions to the members  
12 of the three-judge panel to convene a special session of the  
13 circuit court of the original jurisdiction to hear evidence  
14 relevant to the commission's recommendation. The senior judge  
15 of the panel shall preside. The Chief Justice shall appoint  
16 the three-judge panel within 20 days of the filing of the  
17 commission's opinion finding sufficient evidence of factual  
18 innocence to merit judicial review. If the commission  
19 concludes that there is credible evidence of prosecutorial  
20 misconduct in the case, the chair may request the Attorney  
21 General to appoint a special prosecutor to represent the state  
22 in lieu of the district attorney of the district of conviction  
23 or the district attorney's designee. The request for the  
24 special prosecutor shall be made within 20 days of the filing  
25 of the commission's opinion finding sufficient evidence of  
26 innocence to merit judicial review. Upon receipt of a request  
27 under this subsection to appoint a special prosecutor, the

1 Attorney General may temporarily assign a district attorney,  
2 assistant district attorney, or other qualified attorney, to  
3 represent the state at the hearing before the three-judge  
4 panel. The Attorney General shall not appoint as special  
5 prosecutor any attorney who prosecuted or assisted with the  
6 prosecution in the trial of the convicted person, or is a  
7 prosecuting attorney in the district where the convicted  
8 person was tried. The appointment shall be made no later than  
9 20 days after the receipt of the request.

10 (b) The senior circuit court judge shall enter an  
11 order setting the case for hearing at the special session of  
12 circuit court for which the three-judge panel is commissioned  
13 and shall require the state to file a response to the  
14 commission's opinion within 90 days of the date of the order.  
15 Such response, at the time of original filing or through  
16 amendment at any time before or during the proceedings, may  
17 include joining the defense in a motion to dismiss the charges  
18 with prejudice on the basis of innocence.

19 (c) The district attorney of the district of  
20 conviction, or the district attorney's designee, shall  
21 represent the state at the hearing before the three-judge  
22 panel, except as otherwise provided by this section.

23 (d) The three-judge panel shall conduct an  
24 evidentiary hearing. At the hearing, the court, and the  
25 defense and prosecution through the court, may compel the  
26 testimony of any witness, including the convicted person. All  
27 credible, verifiable evidence relevant to the case, even if

1 considered by a jury or judge in a prior proceeding, may be  
2 presented during the hearing. The convicted person may not  
3 assert any privilege or prevent a witness from testifying. The  
4 convicted person has a right to be present at the evidentiary  
5 hearing and to be represented by counsel. A waiver of the  
6 right to be present shall be in writing.

7 (e) The senior circuit court judge on the panel  
8 shall determine the convicted person's indigency status and,  
9 if appropriate, enter an order for the appointment of counsel.  
10 The court may also enter an order relieving an indigent  
11 convicted person of all or a portion of the costs of the  
12 proceedings.

13 (f) The clerk of court shall provide written  
14 notification to the victim 30 days before any case-related  
15 hearings.

16 (g) Upon the motion of either party, the senior  
17 judge of the panel may direct the attorneys for the parties to  
18 appear before him or her for a conference on any matter in the  
19 case.

20 (h) The three-judge panel shall rule as to whether  
21 the convicted person has proved by clear and convincing  
22 evidence that the convicted person is innocent of the charges.  
23 Such a determination shall require a unanimous vote. If the  
24 vote is unanimous, the panel shall enter dismissal of all or  
25 any of the charges. If the vote is not unanimous, the panel  
26 shall deny relief.



1                   Section 11. The Alabama Innocence Inquiry Commission  
2 shall report to the Chairs of the House and Senate Judiciary  
3 Committees annually by the third legislative day. The report  
4 shall recommend the funding needed by the commission to meet  
5 its responsibilities under this act.

6                   Section 12. There shall be a moratorium on all  
7 executions in the State of Alabama until June 1, 2017.

8                   Section 13. This act shall become effective on the  
9 first day of the third month following its passage and  
10 approval by the Governor, or its otherwise becoming law.