SYNOPSIS: Under existing law, the murder of a first responder is not a capital offense.

This bill would provide that the murder of a first responder would be a capital offense.

Under existing law, there are certain aggravating circumstances listed for capital offenses.

This bill would include as an aggravating circumstance a victim of a capital offense who was a law enforcement officer, a prison or jail guard, or a first responder.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of
specified exceptions; it is approved by the
affected entity; or the Legislature appropriates
funds, or provides a local source of revenue, to
the entity for the purpose.

The purpose or effect of this bill would be
to require a new or increased expenditure of local
capital funds within the meaning of the amendment. However,
the bill does not require approval of a local
governmental entity or enactment by a 2/3 vote to
become effective because it comes within one of the
specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 13A-5-40 and 13A-5-49, Code of
Alabama 1975, as amended by Act 2018-537, 2018 Regular
Session, relating to capital offenses; to provide that murder
of a first responder would be a capital offense; to include
within the aggravating circumstances to be considered in
sentencing for a capital offense circumstances when the victim
was a law enforcement officer, a prison or jail guard, or
first responder; and in connection therewith would have as its
purpose or effect the requirement of a new or increased
 expenditure of local funds within the meaning of Amendment 621
of the Constitution of Alabama of 1901, now appearing as
Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 13A-5-40 and 13A-5-49, as amended by Act 2018-537, 2018 Regular Session, Code of Alabama 1975, are amended to read as follows:

"§13A-5-40.

"(a) The following are capital offenses:

"(1) Murder by the defendant during a kidnapping in the first degree or an attempt thereof committed by the defendant.

"(2) Murder by the defendant during a robbery in the first degree or an attempt thereof committed by the defendant.

"(3) Murder by the defendant during a rape in the first or second degree or an attempt thereof committed by the defendant; or murder by the defendant during sodomy in the first or second degree or an attempt thereof committed by the defendant.

"(4) Murder by the defendant during a burglary in the first or second degree or an attempt thereof committed by the defendant.

"(5) Murder of any police officer, sheriff, deputy, state trooper, federal law enforcement officer, or any other state or federal peace officer of any kind, or prison or jail guard, while such the officer or guard is on duty, regardless of whether the defendant knew or should have known the victim was an officer or guard on duty, or because of some official
or job-related act or performance of such the officer or

"(6) Murder committed while the defendant is under
sentence of life imprisonment.

"(7) Murder done for a pecuniary or other valuable
consideration or pursuant to a contract or for hire.

"(8) Murder by the defendant during sexual abuse in
the first or second degree or an attempt thereof committed by
the defendant.

"(9) Murder by the defendant during arson in the
first or second degree committed by the defendant; or murder
by the defendant by means of explosives or explosion.

"(10) Murder wherein two or more persons are
murdered by the defendant by one act or pursuant to one scheme
or course of conduct.

"(11) Murder by the defendant when the victim is a
state or federal public official or former public official and
the murder stems from or is caused by or is related to his
official position, act, or capacity.

"(12) Murder by the defendant during the act of
unlawfully assuming control of any aircraft by use of threats
or force with intent to obtain any valuable consideration for
the release of said the aircraft or any passenger or crewmen
thereon, or to direct the route or movement of said the
aircraft, or otherwise exert control over said the aircraft.

"(13) Murder by a defendant who has been convicted
of any other murder in the 20 years preceding the crime;
provided that the murder which constitutes the capital crime
shall be murder as defined in subsection (b) of this section;
and provided further that the prior murder conviction referred
to shall include murder in any degree as defined at the time
and place of the prior conviction.

"(14) Murder when the victim is subpoenaed, or has been subpoenaed, to testify, or the victim had testified, in any preliminary hearing, grand jury proceeding, criminal trial or criminal proceeding of whatever nature, or civil trial or civil proceeding of whatever nature, in any municipal, state, or federal court, when the murder stems from, is caused by, or is related to the capacity or role of the victim as a witness.

"(15) Murder when the victim is less than fourteen years of age.

"(16) Murder committed by or through the use of a deadly weapon fired or otherwise used from outside a dwelling while the victim is in a dwelling.

"(17) Murder committed by or through the use of a deadly weapon while the victim is in a vehicle.

"(18) Murder committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle.

"(19) Murder by the defendant where a court had issued a protective order for the victim, against the defendant, pursuant to Section 30-5-1 et seq., or the protective order was issued as a condition of the defendant's pretrial release.
"(20) Murder by the defendant in the presence of a child under the age of 14 years at the time of the offense, if the victim was the parent or legal guardian of the child. For purposes of this subsection, "in the presence of a child" means in the physical presence of a child or having knowledge that a child is present and may see or hear the act.

"(21) Murder when the victim is a first responder who is operating in an official capacity. For the purposes of this subdivision, "first responder" includes emergency medical services personnel licensed by the Alabama Department of Public Health and firefighters and volunteer firefighters as defined by Section 36-32-1.

"(b) Except as specifically provided to the contrary in the last part of subdivision (a)(13) of this section, the terms "murder" and "murder by the defendant" as used in this section to define capital offenses mean murder as defined in Section 13A-6-2(a)(1), but not as defined in Section 13A-6-2(a)(2) and (3). Subject to the provisions of Section 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3), as well as murder as defined in Section 13A-6-2(a)(1), may be a lesser included offense of the capital offenses defined in subsection (a) of this section.

"(c) A defendant who does not personally commit the act of killing which constitutes the murder is not guilty of a capital offense defined in subsection (a) of this section unless that defendant is legally accountable for the murder because of complicity in the murder itself under the
provisions of Section 13A-2-23, in addition to being guilty of
the other elements of the capital offense as defined in
subsection (a) of this section.

"(d) To the extent that a crime other than murder is
an element of a capital offense defined in subsection (a) of
this section, a defendant's guilt of that other crime may also
be established under Section 13A-2-23. When the defendant's
guilt of that other crime is established under Section
13A-2-23, that crime shall be deemed to have been "committed
by the defendant" within the meaning of that phrase as it is
used in subsection (a) of this section.

"§13A-5-49.

"Aggravating circumstances shall be any of the
following:

"(1) The capital offense was committed by a person
under sentence of imprisonment\textsuperscript{7}

"(2) The defendant was previously convicted of
another capital offense or a felony involving the use or
threat of violence to the person\textsuperscript{7}

"(3) The defendant knowingly created a great risk of
death to many persons\textsuperscript{7}

"(4) The capital offense was committed while the
defendant was engaged or was an accomplice in the commission
of, or an attempt to commit, or flight after committing, or
attempting to commit, rape, robbery, burglary or kidnapping\textsuperscript{7}
"(5) The capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

"(6) The capital offense was committed for pecuniary gain.

"(7) The capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

"(8) The capital offense was especially heinous, atrocious, or cruel compared to other capital offenses.

"(9) The defendant intentionally caused the death of two or more persons by one act or pursuant to one scheme or course of conduct.

"(10) The capital offense was one of a series of intentional killings committed by the defendant.

"(11) The capital offense was committed when the victim was less than 14 years of age.

"(12) The capital offense was committed by the defendant in the presence of a child under the age of 14 years at the time of the offense, if the victim was the parent or legal guardian of the child. For the purposes of this subdivision, "in the presence of a child" means in the physical presence of a child or having knowledge that a child is present and may see or hear the act.

"(13) The victim of the capital offense was any police officer, sheriff, deputy, state trooper, federal law enforcement officer, or any other state or federal peace
officer of any kind, or prison or jail guard, while the
officer or guard was on duty, regardless of whether the
defendant knew or should have known the victim was an officer
or guard on duty, or because of some official or job-related
act or performance of the officer or guard.

"(14) The victim of the capital offense was a first
responder who was operating in an official capacity. For the
purposes of this subdivision, "first responder" includes
emergency medical services personnel licensed by the Alabama
Department of Public Health, as well as firefighters and
volunteer firefighters as defined by Section 36-32-1."

Section 2. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an
existing crime.

Section 3. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.