

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 231	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Civil Justice Subcommittee; Workman and others	85 Y's	31 N's
COMPANION BILLS:	(CS/CS/SB 718, SB 1466)	GOVERNOR'S ACTION:	Vetoed

SUMMARY ANALYSIS

CS/CS/HB 231 passed the House on April 18, 2013 as CS/CS/SB 718. The bill makes a number of changes to current law on alimony and shared parental responsibility. The primary elements to determine entitlement to alimony are need and the ability to pay, but the statutes and case law impose many more criteria. There are four different types of alimony: bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony. An award of alimony may be modified or terminated early in certain circumstances. The bill:

- Eliminates permanent alimony.
- Redefines the term "marital assets and liabilities" to include paid obligations and appreciation of assets.
- Provides formulas and guidelines for determining passive appreciation of certain assets.
- Requires security and interest for installment payments of alimony from certain assets.
- Provides for priority of bridge-the-gap alimony, followed by rehabilitative alimony.
- Adds a rebuttable presumption that the parties will have a lower standard of living after the dissolution, but directs the court to take into consideration the lifestyle enjoyed prior to the dissolution.
- Provides that in a dissolution after retirement, the obligee must prove that the obligor retiree has the ability to pay alimony.
- Creates presumptions for earning ability imputed to an obligee.
- Requires written findings justifying factors regarding an alimony award or modification.
- Creates evidentiary thresholds for certain awards of alimony or modification.
- Limits alimony based on formulas that take into account relative incomes and the length of the marriage.
- Prohibits modification of alimony based solely on a reduction in child support.
- Allows bifurcation of a dissolution case if pending more than 180 days, and requires bifurcation if pending over 365 days.
- Allows modification or termination of existing modifiable alimony awards.
- Provides that an obligor's subsequent marriage or cohabitation does not constitute a basis for alimony modification, nor are the income and assets of the new spouse or cohabitant relevant in a modification action.
- Provides a schedule for review of existing non-modifiable awards of alimony.
- Provides a legal presumption that equal time-sharing with a minor child is in the best interests of the child, with exceptions. The presumption is prospective in nature, and is not a basis for modification of a current order.

The bill does not appear to have a fiscal impact on the state or local governments.

The effective date of this bill was July 1, 2013; however, this bill was vetoed by the Governor on May 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Alimony

In general, alimony provides support to a financially dependent former spouse.¹ Alimony may be awarded to either party in a dissolution of marriage case,² and may be awarded in certain other cases. The judgment awarding alimony may be based upon the court's findings of fact, or by an underlying agreement of the parties that is approved by the court.³ Alimony is determined by considering both the need of the recipient and the ability to pay of the other party.⁴ Alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.⁵

While there is some statutory guidance regarding alimony, much of the law on alimony is common law (that is, established through case precedent). The leading case on alimony is *Canakaris v. Canakaris*,⁶ a 1980 case that set forth many general concepts of alimony but also confirmed that ultimately the setting of alimony is a matter within the broad discretion of a trial court. Writing in favor of broad discretion, the Supreme Court said:

Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose, including lump sum alimony, permanent periodic alimony, rehabilitative alimony, child support, a vested special equity in property, and an award of exclusive possession of property. As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme.⁷

However, the court noted the problem with such broad discretion:

The discretionary power that is exercised by a trial judge is not, however, without limitation, and both appellate and trial judges should recognize the concern which arises from substantial disparities in domestic judgments resulting from basically similar factual circumstances. The appellate courts have not been helpful in this regard. Our decisions and those of the district courts are difficult, if not impossible, to reconcile. The trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.⁸

In the 33 years since *Canakaris*, little has changed in alimony law. While some statutory guidance has been added and case law has somewhat narrowed judicial discretion, a trial court still has broad discretion in setting the amount and term of alimony. Expressing his frustration with the concept of broad discretion, one appellate judge wrote in 2002:

¹ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla.B.J. 71, 71 (Oct. 2004).

² Section 61.08(2), F.S.

³ Section 61.14(1)(a), F.S.

⁴ See s. 61.08(2), F.S.; *Payne v. Payne*, 88 So.3d 1016 (Fla. 2d DCA 2012).

⁵ Section 61.08(2), F.S.

⁶ *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980).

⁷ *Id.* at 1202.

⁸ *Id.* at 1203.

I write, however, to express my view that broad discretion in the award of alimony is no longer justifiable and should be discarded in favor of guidelines, if not an outright rule.⁹

Changes to Definitions Regarding Alimony

Definitions Regarding the Duration of the Marriage

The types of alimony available depend on duration of the marriage. Current law provides a rebuttable presumption that:

- A "long-term marriage" has a duration of 17 years or more.
- A "moderate-term marriage" is between 7 and 17 years.
- A "short-term marriage" is less than 7 years.¹⁰

These presumptions related to the length of a marriage were first enacted in statute in 2010,¹¹ and were based on definitions described by prior case law. This bill changes the presumptions to a formula, changes terminology, and changes marriage durations as follows:

- A "long-term marriage" means a marriage of 20 years or more.
- A "mid-term marriage" means a marriage of more than 11, and less than 20 years.
- A "short-term marriage" means a marriage of 11 years or less.¹²

Other Definitions Created By This Bill

The terms alimony and net income are not defined by current law. The bill adds:

- "Alimony" is defined as a court-ordered payment of support by an obligor to an obligee.
- "Net income" means the amount considered by the court for child support purposes.¹³

The definition of alimony identifies the "obligor" and "obligee" spouses, and does not limit payment to dissolution of a marriage. The definition of net income limits the term and requires a court to use the same income for consideration of alimony as the court uses in determining child support.

Establishment of Alimony - Changes by Type of Alimony

Current statutory law provides for four types of alimony post-dissolution: bridge-the-gap alimony,¹⁴ rehabilitative alimony,¹⁵ durational alimony,¹⁶ and permanent alimony.¹⁷

- Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single.¹⁸

⁹ *Bacon v. Bacon*, 819 So.2d 950, 954 (Fla. 4th DCA 2002)(Farmer, J., concurring).

¹⁰ Section 61.08(4), F.S.

¹¹ Section 1 of ch. 2010-199, L.O.F.

¹² *Cf. Jaffy v. Jaffy*, 965 So.2d 825, 828 (Fla. 4th DCA 2007); *Iribar v. Iribar*, 510 So.2d 1023, 1024 (Fla. 3d DCA 1987); *Yitzhari v. Yitzhari*, 906 So.2d 1250, 1256 (Fla. 3d DCA 2005)(“A nine-year marriage has been held to fall into the ‘gray area’ in which ‘[t]here is no presumption for or against permanent alimony.’” [emphasis supplied, citations omitted]); *Adinolfi v. Adinolfi*, 718 So.2d 369, 370 (Fla. 4th DCA 1998)(nine year marriage “may very well be in the ‘gray area’”).

¹³ See s. 61.30, F.S.

¹⁴ Section 61.08(5), F.S.

¹⁵ Section 61.08(6), F.S.

¹⁶ Section 61.08(7), F.S.

¹⁷ Section 61.08(8), F.S.

¹⁸ Section 61.08(5), F.S.

- Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or the acquisition of employment skills.¹⁹
- Durational alimony may be awarded to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration.
- Permanent alimony may be awarded to provide for the necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet them following dissolution of marriage.

Permanent Alimony

Current law allows for an award of permanent alimony.²⁰ Permanent alimony "may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage."²¹ Permanent alimony continues until death of the obligor or obligee, remarriage of the obligee, or termination by a court (on a petition for modification).²² In order to award permanent alimony the court must include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties.²³ Permanent alimony may be awarded following a marriage of:

- Long duration if the award is appropriate upon consideration of the factors in s. 61.08(2), F.S.;
- Moderate duration if the award is based upon clear and convincing evidence after consideration of the factors in s. 61.08(2), F.S.; or
- Short duration if there are written findings of exceptional circumstances.

The bill removes permanent alimony from the statute.

Durational Alimony

Durational alimony²⁴ provides a party with assistance following dissolution of a marriage. Like permanent alimony, it terminates upon the death of either party or upon remarriage of the recipient,²⁵ but unlike permanent alimony it ends after a fixed duration of time. It may also terminate upon a change in circumstances²⁶ or when the recipient lives with another in a "supportive relationship,"²⁷ and may also be extended on a petition for modification. The bill:

- Provides that durational alimony may be awarded for a short-term, mid-term, or long-term marriage.
- Provides that an award of durational alimony must contain written findings that no other form of alimony is appropriate.
- Requires modification or termination upon the existence of a supportive relationship.
- Limits the duration of durational alimony to 50 percent of the length of the marriage, unless the recipient proves by a preponderance of the evidence that circumstances justifying the need for a longer award of alimony, which circumstances must be set out in writing by the court.

Rehabilitative Alimony and Bridge-the-Gap Alimony

¹⁹ Section 61.08(6)(a), F.S.

²⁰ Section 61.08, F.S.

²¹ Section 61.08(8), F.S.

²² *Id.*

²³ *Id.*

²⁴ "The 2010 amendments [to ch. 61, F.S.], created durational alimony, an intermediate form of alimony between bridge-the-gap and permanent alimony." *Nousari v. Nousari*, 94 So.3d 704 (Fla. 4th DCA 2012).

²⁵ Section 61.08(7), F.S.

²⁶ Sections 61.08(7) and 61.14(1)(a), F.S.

²⁷ Section 61.14(1)(b)1. F.S.

The bill makes no change that directly affects the definition of or general concepts governing either rehabilitative alimony or bridge-the-gap alimony. However, like durational alimony, the bill does alter qualifications for and the legal standards affecting an initial claim for, or modification of, such an award, as further explained below.

Multiple Types of Alimony

Current law provides that the court may award the four different types of alimony individually or in combination.²⁸ The bill provides that the court must prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form. The bill further provides that these three forms of alimony may be awarded in combination only when the goal is to achieve rehabilitation.

Establishment of Alimony - Changes by Duration of Marriage

Short-Term Marriage

Under current law, all forms of alimony may be awarded after a short-term marriage. However, permanent alimony may only be awarded upon a showing of "exceptional circumstances" and a showing that no other form of alimony is fair and reasonable. The bill:

- Creates a presumption against any award of alimony following a short-term marriage, unless need is shown by a preponderance of the evidence;
- Requires that need for bridge-the-gap or rehabilitative alimony be shown by a preponderance of the evidence and a need for durational alimony be shown by clear and convincing evidence;
- Limits any award of alimony to 25 percent of the obligor's gross monthly income, not including outside sources not relied upon during the marriage;
- Repeals authority for an award of permanent alimony; and
- Requires imputation of income (see below).

Mid-Term Marriage

Under current law, all forms of alimony may be awarded after a mid-term marriage. However, permanent alimony may only be awarded upon a showing that such award is "appropriate" based on clear and convincing evidence and a showing that no other form of alimony is fair and reasonable. The bill:

- Provides that there is no presumption in favor of or against an award of alimony following a mid-term marriage;
- Limits alimony to the 35 percent of the obligor's net income obligor's gross monthly income, not including outside sources not relied upon during the marriage;
- Repeals authority for an award of permanent alimony; and
- Requires imputation of income (see below).

Long-Term Marriage

Under current law, all forms of alimony may be awarded after a long-term marriage. However, permanent alimony may only be awarded upon a showing that no other form of alimony is fair and reasonable. The bill:

- Creates a rebuttable presumption in favor of an award of alimony that may only be overcome by clear and convincing evidence that there is no need for alimony;

²⁸ Section 61.08, F.S.

- Limits alimony in a long-term marriage to a maximum of 38 percent of the obligor's gross monthly income, not including outside sources not relied upon during the marriage; and.
- Repeals authority for an award of permanent alimony.

Alimony Limits Applicable to All Marriages

The combination of an award of rehabilitative alimony and another form of alimony may be awarded up to a maximum of 40 percent of the obligor's gross monthly income during the temporary period in which rehabilitative alimony has been awarded. All awards of alimony will be made without consideration of, sources of income acquired outside of the marriage which were not relied upon during the marriage.

Factors Applicable to All Alimony Awards

Factors - In General

Current statutory factors that a court must consider in awarding alimony include:²⁹

- The standard of living established during the marriage.
- The duration of the marriage.
- The age and the physical and emotional condition of each party.
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- The contribution of each party to the marriage, including, but not limited, services rendered in homemaking, child care, education, and career building of the other party.
- The responsibility each party will have for minor children they have in common.
- The tax consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable nondeductible payment.
- All sources of income available to either party, including income available through investments of any asset held by that party.
- Any other factor necessary to do equity and justice between the parties.

The bill:

- Redefines the term "marital assets and liabilities" for purposes of equitable distribution in dissolution of marriage actions to include virtually all property of either or both parties, and the appreciated value of property, jointly held property, gifts, and retirement interests;
- Provides that the term includes the "paydown" of principal of notes and mortgages secured by nonmarital real property and certain passive appreciation in such property under certain circumstances;
- Provides formulas and guidelines for determining the amount of such passive appreciation;
- Requires security and interest relating to the installment payment of such assets;
- Permits the court to provide written findings regarding any installment payments;
- Provides for the priority of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form;
- Specifies criteria for awarding rehabilitative alimony;
- Combines consideration of the "lifestyle" established during the marriage with a presumption that the standard of living of both obligor and obligee will decline after dissolution in awarding alimony;

²⁹ Section 61.08(2), F.S.

- Requires the court to specifically identify any other factor used in making the alimony award, and requires the court to list all findings of fact supporting that factor;
- Provides that the court may order alimony exceeding the limits set forth in the statutory system if there is a need, which determination must be set out in writing;
- Provides that a party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12), F.S., before the filing of the petition for dissolution is not required to pay alimony unless the party seeking alimony proves by clear and convincing evidence the other party has the ability to pay alimony; and
- Provides that obligor's subsequent marriage or cohabitation does not constitute a basis for alimony modification, nor are the income and assets of the new spouse or cohabitant relevant in a modification action, absent exceptional circumstances.

The bill also makes numerous grammatical and style changes to the list of statutory factors which do not appear to affect alimony awards.³⁰

Relative Incomes

Under current law, an award of alimony may not leave the obligor with significantly less net income than the net income of the recipient without written findings of exceptional circumstances.³¹ This provision is repealed and replaced with a provision providing that based upon the length of the marriage, alimony may not exceed a percentage of the obligor's income unless need is shown and reduced to writing in the court's order.

Imputed Income

Under current law, the court has the discretion to impute income in appropriate circumstances.³² Imputed income can be thought of as the income that the party should be earning. If the trial court determines that a spouse's past income has declined due to voluntary action, the court may impute a higher income based on "history, qualifications, and prevailing wages."³³ The trial court's imputation of income must be supported by competent, substantial evidence.³⁴

As applied to short-term and mid-term marriages, the bill prohibits imputation of Social Security retirement benefits to an obligor and requires imputation of income to the obligee as follows:

- An obligee who is unemployed for less than one year prior to the filing of a petition for dissolution has 90% of previous income imputed.
- An obligee who is unemployed between 1 and 2 years prior to the filing of the petition has 80% of previous income imputed.
- An obligee who is unemployed between 2 and 3 years prior to the filing of the petition has 70% of previous income imputed.
- An obligee who is unemployed between 3 and 4 years prior to the filing of a petition for dissolution has 60% of previous income imputed.

³⁰ For instance, the paragraph on tax treatment removes the clause regarding designation of alimony as nontaxable and substitutes a clause requiring that an alimony award be consistent with state and federal tax laws. Federal tax laws provide that, in general, alimony is deductible by the obligor and is income to the recipient, which is usually the preferable strategy to minimize tax burdens. However, federal tax law allows the court order awarding alimony to designate that a portion or all of the alimony is not deductible by the obligor and thus not income to the recipient. Thus, this change in language has no apparent legal consequence. See generally Publication 17 by the IRS, last accessed on February 11, 2013 at: <http://www.irs.gov/publications/p17/ch18.html>.

³¹ Section 61.08(9), F.S.

³² Section 61.08(2)(e), F.S., provides that the court may look to the "earning capacities" of both parties.

³³ *Konsoulas v. Konsoulas*, 904 So.2d 440, 444 (Fla. 4th DCA 2005).

³⁴ *Zarycki-Weig v. Weig*, 25 So.3d 573 (Fla. 4th DCA 2009).

- An obligee who is unemployed between 4 and 5 years prior to the filing of a petition for dissolution has 50% of previous income imputed.
- An obligee who is unemployed more than 5 years prior to the filing of a petition for dissolution has 40% of previous income imputed, or the current minimum wage, whichever is greater.

However, the court must reduce these imputations if the obligee proves by a preponderance of the evidence that he or she does not have the ability to earn the imputed income through reasonable means. An obligee alleging a decreased earning capacity as the result of a disability must meet the definition of disability as determined by the Social Security Administration.

Requirements of an Alimony Award

Findings of Fact

Case law requires that an award of alimony which is not based upon a settlement must include findings of fact relating the award to the factors in the statute which must be considered by the court.³⁵ "Failure to include findings of fact as required by section 61.08, F.S., is reversible error."³⁶ Further, "[t]he purpose of these findings is to 'assist the appellate court in providing a meaningful review.'"³⁷ Statutory law also requires the court to make findings of fact to support its award of alimony.³⁸ The bill adds the following requirements regarding written findings:

- The basis for awarding a combination of forms of alimony.
- The order must determine the duration of the alimony and the type awarded.
- If the court utilizes any factor other than the statutory factors for an award of alimony, the factor must be specifically identified, together with findings of fact justifying the application of the factor.
- The order must include written findings that the obligor party has the ability to pay and that the party seeking alimony has met the burden of proof.

Burden of Proof

The bill also incorporates current law into statute by providing that the burden of proof to show need is on the party seeking alimony.

Enforcement of an Alimony Award

Security for an Alimony Award

Under current law, the court may protect an alimony award by requiring the obligor to purchase life insurance or post a bond. The bill:

- Provides that any requirement to purchase life insurance must be for a decreasing term policy.
- Requires that the policy may only be awarded upon a showing of special circumstances, with the court making specific evidentiary findings on the cost and impact on the party paying for the policy.
- Provides that such security may be modified if the underlying alimony award is modified.
- Provides that the court may order marital assets to be distributed by the payment of installments, taking into account that security and a reasonable rate of interest may be awarded.

³⁵ Section 61.08(1), F.S.

³⁶ *Farley v. Farley*, 800 So.2d 710, 711 (Fla. 2d DCA 2001).

³⁷ *Esaw v. Esaw*, 965 So.2d 1261 (Fla. 2d DCA 2007), citing *Milo v. Milo*, 718 So.2d 343, 344 (Fla. 2d DCA 1998).

³⁸ Section 61.08(1), F.S.

Modification of an Alimony Award

Modification - In General

Under current law, either party may request modification of an award of alimony, either agreed upon or based upon a court order. Current law requires the moving party to show a substantial change in circumstances of one of the parties to justify the modification. The court in an action for modification has discretion to make an equitable award based upon the current circumstances of the parties.³⁹ A modification order may be retroactive to the date of the filing of the action, or the filing of the petition for modification, as equity requires.⁴⁰ A marital settlement agreement becomes a contractual duty which, when endorsed by court order, may not be set aside or revisited, according to principles of collateral estoppel and res judicata.⁴¹ "Florida courts do not take lightly agreements made by husband and wife concerning spousal support. A marital settlement agreement as to alimony or property rights which is entered before the dissolution of marriage is binding upon the parties."⁴² The bill:

- Codifies the requirement that there be a substantial change in circumstances to justify a modification of an alimony award.
- Limits modification based on an increase in an obligor's income to provide that an increase is not considered permanent unless it has been maintained for 1 year and will be sustained in the future.
- Provides that an alimony order will be modified upward upon a showing by a preponderance of the evidence of an increased ability to pay alimony.
- Provides that the court shall reduce or terminate alimony upon finding a supportive relationship exists between the obligee and another person, and provides indicators of how such a relationship is determined.
- Provides a rebuttable presumption that any modification or award of alimony is retroactive to the date of the filing of the petition for dissolution or petition for modification of alimony.
- Provides that an unreasonable litigation of support order may result in an award of attorneys' fees.

Modification of Alimony Based on the Existence of a Supportive Relationship

Under current law, a court may reduce or terminate an award of alimony based on its specific written findings that since the award of alimony the spouse receiving alimony has entered into a supportive relationship with another person with whom he or she is living.⁴³ The bill:

- Provides that the court must reduce or terminate the alimony award because of the supportive relationship, except upon a showing by "clear and convincing evidence" that the need for alimony has not been reduced by the relationship.
- Removes the requirement that the obligee spouse is residing with the other person.

Modification Based on Child Support Change

The bill adds a new provision that if child support and alimony were set at the same time, the alimony award may not be modified solely because of a later reduction or termination of child support payments, unless the alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee. Future reduction in the amount of child support is not grounds for modification of the related alimony award.

³⁹ Section 61.14(1), F.S.

⁴⁰ *Id.*

⁴¹ See, e.g., *Perry v. Perry*, 976 So.2d 1151 (Fla. 4th DCA 2008).

⁴² *Griffith v. Griffith*, 860 So.2d 1069, 1073 (Fla. 1st DCA 2003), citing *Dowie v. Dowie*, 668 So.2d 290, 292 (Fla. 1st DCA 1996).

⁴³ Section 61.14(1)(b)1., F.S.

Modification or Termination of Alimony Based on Retirement

Current law provides that retirement of the obligor is a substantial change in circumstances that may warrant the filing of a petition to modify alimony.⁴⁴ There are no statutory standards relating to modification or termination of alimony based on retirement, it is strictly up to the trial court's discretion. The bill provides for modification or termination of an alimony award based on retirement.

Age or Retirement of the Obligor

Under current law, if an obligor is unemployed or underemployed, the court in an enforcement proceeding may order the obligor to seek employment or participate in training to seek employment, among other tasks, in order to avoid contempt of court.⁴⁵ Case law holds that retirement is a change in circumstances that may be considered together with other factors in a petition to modify an alimony award.⁴⁶ The bill:

- Provides that the point at which an obligor reaching a "reasonable retirement age for his or her profession" and who has actually retired, is a substantial change in circumstances as a matter of law.
- Provides that a court, when reviewing the retirement of an obligor who has not reached the normal age for retirement, must consider the age and health of the obligor, the type of work, motivation for retirement, and the normal retirement age for that type of work for early retirement.
- Provides that in anticipation of retirement, the obligor may file a petition for termination or modification of the alimony award effective upon the retirement date.
- Provides that the court must terminate or reduce the alimony award upon retirement, unless the obligee proves by clear and convincing evidence that the need continues and the ability to pay of the obligor remains.

Alimony Outside of a Dissolution of Marriage Action

Under current law, alimony and child support may be sought without filing a dissolution proceeding.⁴⁷ Although the term is not used in Florida law, this effectively creates what many other states refer to as a legal separation. The bill provides that alimony awarded apart from dissolution will be calculated in accordance with s. 61.08, F.S.

Other Changes to Dissolution of Marriage Laws

Alimony Pendente Lite and Suit Money

Alimony pendente lite is temporary alimony awarded during pendency of a dissolution of marriage action to furnish a dependent spouse with a means of living so he or she may not become a charge upon the state while the case is being adjudicated.⁴⁸ The court may also order that one party pay for the legal costs of the case, called "suit money."⁴⁹ Under current law, in every proceeding for dissolution, a party may claim alimony pendente lite and suit money.⁵⁰ The court may grant either or both, so long

⁴⁴ *Pimm v. Pimm*, 601 So.2d 534 (Fla. 1992).

⁴⁵ Section 61.14(5)(b), F.S.

⁴⁶ *Pimm v. Pimm*, 601 So.2d 534 (Fla. 1992).

⁴⁷ Section 61.09, F.S.

⁴⁸ *Grace v. Grace*, 162 So.2d 314 (Fla. 1964).

⁴⁹ Section 61.071, F.S.; Section 61.16, F.S.; *Scanlon v. Scanlon*, 154 So.2d 899 (Fla. 1963).

⁵⁰ Section 61.071, F.S.

as the award is "reasonable."⁵¹ By simply referring to "reasonable," current law does not limit alimony pendent lite or provide any standard for an award.

The bill requires that alimony pendent lite be calculated pursuant to the same statutory standards as any other award of alimony.⁵²

Bifurcation of Dissolution of Marriage Case

Under current law, the court may, upon a showing that injustice would result from delay, enter a judgment of dissolution, reserving jurisdiction to determine other matters such as property division and child support.⁵³ This is called "bifurcation" of the action. A party might petition the court for bifurcation where the party would like to expedite the divorce so he or she can remarry. Current case law discourages the use of bifurcation. Specifically, in *Cloughton v. Cloughton*, the Florida Supreme Court explained:

[W]e believe trial judges should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use.⁵⁴

The bill:

- Provides that a court may not bifurcate the divorce until more than 180 days have elapsed from filing of the action, unless written findings are made regarding exceptional circumstances. This appears to be a codification of current law applicable to the entire case.
- Provides that if more than 180 days have elapsed since the filing of the petition, the court may bifurcate the action, but only if appropriate temporary orders are made.
- Provides that if more than 365 days have elapsed since the filing of the petition, the court must grant dissolution of the marriage with a reservation of all other substantive issues. In such case the court must enter temporary terms as are necessary.

Effect of Bill on Existing Alimony Awards

Current awards of alimony, including permanent alimony, are subject to modification upon a showing of changed circumstances as set forth in the statutes.⁵⁵ The burden of proof is on the petitioner to show changes that would require modification.⁵⁶ The bill:

- Provides that a non-modifiable marital settlement is not subject to the retroactive modifications provision of the bill.
- Provides that the amended statute applies to all initial awards of and agreements to pay alimony, and modifications of alimony made prior to July 1, 2013, unless those agreements or awards are "expressly non-modifiable."
- Provides that the amendments to the statute may serve as a basis to modify awards entered into before July 1, 2013, to change the amount or duration.

⁵¹ *Id.*

⁵² See s. 61.08, F.S.

⁵³ Section 61.19, F.S.

⁵⁴ *Cloughton v. Cloughton*, 393 So.2d 1061, 1062 (Fla. 1981).

⁵⁵ Section 61.14, F.S.

⁵⁶ *Koski v. Koski*, 98 So.3d 93 (Fla. 4th DCA 2012).

- Provides that the amendments to the statute may also serve as a basis to modify an agreement for alimony (other than a non-modifiable marital settlement agreement) if the agreement is 25 percent or more in duration or amount than an alimony award calculated under the amendments made by the bill.
- Changes the schedule by which obligors may file for modifications.
- An obligor whose initial agreement or modification was made before July 1, 2013, may file a modification action according to the following schedule:
 - An obligor subject to an award of 15 years or more may file for modification on or after July 1, 2013.
 - An obligor subject to an award of 8 to 15 years may file for modification on or after July 1, 2014.
 - An obligor subject to an award of less than 8 years may file for modification on or after July 1, 2015.

Parenting and Time Sharing

Shared Parental Responsibility

The public policy of the state regarding custody of minor children is currently expressed in s. 61.13(2)(c)1, F.S:

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.⁵⁷

The bill add to this statement of public policy that "equal time sharing" is in the best interests of the child unless the court finds:

- The arrangement would be dangerous or detrimental to the child;
- The safety or health of the child would be endangered;
- Clear and convincing evidence of extenuating circumstances with written findings;
- A parent is incarcerated;
- The distance between parents makes equal time-sharing impracticable;
- A parent does not request at least 50 percent time sharing;
- A permanent injunction has been entered or is warranted against a parent or household member relating to contact between the subject of the injunction and the parent or household member; or
- Domestic violence as defined in s. 741.28, F.S., has occurred.

There is a rebuttable presumption that a child abuse or domestic violence conviction, or a domestic injunction indicates detriment to the child. The convicted parent is not relieved of financial responsibility, however. The expressed wishes of the parents may be considered by the court, taking into account the best interests of the child, and the court may still award sole responsibility to one parent. Access to medical records and other information about the child may not be withheld from a parent unless the court so orders.

The changes are prospective in application and do not justify modification of a custody order entered prior to July 1, 2013.

Child Support

⁵⁷ See, *Schwieterman v. Schwieterman*, 2012 WL 1885907, --- So.3d --- (Fla. 5th DCA 2012).

Child support guidelines allow the court to adjust a statutory award based upon additional factors.⁵⁸ Included in those factors which might adjust an award up or down, is the "parenting plan."⁵⁹ Currently, deviations from the promulgated schedule of child support must be supported by the factors listed in the statute.

The parenting plan is defined by statute and must be reduced to a document endorsed by the court.⁶⁰ The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.⁶¹

Recently, a number of child support cases have been decided based upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.⁶²

The bill amends s. 61.30, F.S., to expand the court's ability to recognize a course of dealing by the parents in awarding child support outside the schedule. The bill includes in the deviation factors of s. 61.30(11)(a), F.S., "a court-ordered time-sharing schedule, or particular time-sharing schedule exercised by agreement of the parties." This will allow the court to take into consideration the actions of the parties, even if not reduced to writing. The expanded factor which the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

The bill provides that in adjusting a child support award, the court may take into consideration not only the court ordered time-sharing schedule of the parents, but also the time-sharing schedule actually exercised by them.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁵⁸ Section 61.30, F.S.

⁵⁹ Section 61.30(11)(a)10., F.S.

⁶⁰ Section 61.046, F.S.

⁶¹ See *State Dept. of Revenue v. Kline*, 95 So.3d 440 (Fla. 1st DCA 2012); *Department of Revenue v. Dorkins*, 91 So.3d 278 (Fla. 1st DCA 2012); *Department of Revenue v. Aluscar*, 82 So.3d 1165 (Fla. 1st DCA 2012).

⁶² *Id.*

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

This bill may increase the court workloads in dissolution of marriage cases. The bill requires written findings for many court determinations, and enables review of existing alimony awards in light of the new standards and other amendments to ch. 61, F.S. This bill may also decrease court workloads because it creates alimony standards that are more certain than those under current law, which may encourage settlement of cases that are currently litigated. It is difficult to quantify the possible costs or savings resulting from passage of this bill.