

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 231 Family Law

SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Workman and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N, As CS	Ward	Bond
2) Judiciary Committee	14 Y, 4 N, As CS	Ward	Havlicak

SUMMARY ANALYSIS

Alimony provides financial support to a financially dependent former spouse. The primary elements to determine entitlement 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 makes a number of changes to current law on alimony and dissolution of marriage. The bill:

- Eliminates permanent alimony.
- Eliminates consideration of the standard of living established during the marriage as a factor in determining 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.
- Creates a presumption that the parties will have a lower standard of living after divorce.
- Limits alimony based on formulas that take into account relative incomes and the length of the marriage.
- Provides that alimony terminates upon the obligee reaching retirement age.
- Shifts the burden of proof regarding the need for alimony to the obligee in certain circumstances.
- 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 alimony awards.
- Provides a schedule for review of existing awards of alimony.
- Non-modifiable marital settlement agreements are not subject to the retroactive provisions of the bill.
- Provides a legal presumption that equal time-sharing with a minor child is in the best interests of the child. The presumption is prospective in nature, and is not a basis for modification of a current order.
- 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.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

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.

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:

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 more than 20 years.
- A "mid-term marriage" means a marriage of between 12 and 20 years.
- A "short-term marriage" means a marriage of less than 12 years.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.
- "Net income" means the amount considered by the court for child support purposes.¹³

The definition of alimony was changed to identify the "obligor" and "obligee" spouses, and remove a reference to alimony being paid "after 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.

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 This change to 10 years conforms statutory law to some case law prior to the adoption of the 7 year standard for short-term marriage. See *Jaffy v. Jaffy*, 965 So.2d 825, 828 (Fla. 4th DCA 2007); *Iribar v. Iribar*, 510 So.2d 1023, 1024 (Fla. 3d DCA 1987). But see *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.

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
- 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 ends permanent alimony.

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.

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.

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.

- 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

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 clear and convincing evidence.
- Requires that need for alimony be shown by clear and convincing evidence.
- Limits any award of alimony to 20 percent of the obligor's net income.
- Repeals authority for an award of permanent alimony.
- 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 30 percent of the obligor's net income.
- Repeals authority for an award of permanent alimony.
- 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:

²⁸ Section 61.08, F.S.
STORAGE NAME: h0231c.JDC
DATE: 3/18/2013

- 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.
- Limits alimony in a long-term marriage to a maximum of 33 percent of the obligor's monthly net income.
- Repeals authority for an award of permanent alimony.

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:

- Eliminates consideration of the standard of living established during the marriage as a criterion in awarding alimony.
- Provides the court may consider as income any asset acquired outside the marriage and relied upon during the marriage.
- Requires the court to consider the standard of living the parties will have after application of the alimony award.
- Adds a rebuttable presumption that the standard of living of both parties will be lower after dissolution, which presumption may be overcome by a preponderance of the evidence.
- 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.
- 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.

²⁹ Section 61.08(2), F.S.
STORAGE NAME: h0231c.JDC
DATE: 3/18/2013

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 alimony may not be awarded to a party with an equal or greater monthly net income than the obligor.

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.
- 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.

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)(c), 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).

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 of fact:

- 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.

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

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.

³⁹ Section 61.14(1), F.S.

⁴⁰ *Id.*

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 2 years and will be sustained in the future.
- Provides that an alimony order will be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony.

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.
- Provides that there is a rebuttable presumption that any modification or termination based on a supportive relationship is retroactive to the date of filing the petition.
- Adds a provision for attorney's fees in the event of unreasonable requests for modification of an existing award.

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 deduction 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.

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 of Obligee

The bill provides that alimony terminates when the obligee reaches full retirement age under the Social Security law. However, this may be overcome by the obligee if he or she proves by clear and convincing evidence that the need for alimony exists even after receipt of the Social Security benefits and that the obligor's ability to pay has not diminished.

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.

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

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 reaching the retirement age for full Social Security payments is a substantial change in circumstances.
- Provides that a court, when reviewing the retirement of an obligor who has not reached normal or Social Security age for retirement, must consider the age and health of the obligor, the type of work, 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, or the date that the obligor reaches full retirement age for full Social Security benefits.
- 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 the same.

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 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 pendente lite be calculated pursuant to the same statutory standards as any other award of alimony.⁵²

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.

⁵¹ *Id.*

⁵² See s. 61.08, F.S.

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 *Claughton v. Claughton*, 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.
- 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.

⁵³ Section 61.19, F.S.

⁵⁴ *Claughton v. Claughton*, 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).

- 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 after July 1, 2015.
- An obligor who has agreed to permanent alimony may file for modification on or after July 1, 2013.
- An obligor who has agreed to durational alimony of 10 years or more may file a modification action on or after July 1, 2014.
- An obligor who has agreed to durational alimony of 5 to 10 years may file a modification action on or after July 1, 2015.

Parenting and Time Sharing

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 changes this statement of public policy to provide a presumption that equal time-sharing with a minor child is presumed to be in the best interests of the child. The presumption may be overcome if the court finds:

- 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;
- There is evidence of domestic violence; or
- A parent does not request at least 50 percent time sharing.

The change is prospective in application and does not justify modification of a custody order entered prior to July 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 61.071, F.S., regarding alimony pendente lite.

Section 2 amends s. 61.08, F.S., regarding alimony.

Section 3 amends s. 61.09, F.S., regarding alimony and child support unconnected with dissolution.

Section 4 amends s. 61.13, F.S., regarding support of children; parenting and time sharing.

Section 5 provides for a presumption in favor of equal time sharing, to apply prospectively.

Section 6 amends s. 61.14, F.S., regarding enforcement and modification of support.

Section 7 amends s. 61.19, F.S., regarding entry of judgment of dissolution of marriage; delay period; separate adjudication of issues.

Section 8 provides transition rules regarding modification of existing orders of alimony.

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

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. See Fiscal Comments.

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:

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment makes changes to the original bill as follows:

- The court is directed to prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony.
- The court may determine that all or a portion of the alimony payment is a nontaxable, nondeductible amount.
- The court may consider as income any asset acquired outside the marriage and relied upon during the marriage.
- Durational alimony may not exceed 50 percent of the length of the marriage unless the party seeking alimony proves by clear and convincing evidence that exceptional circumstances justify the need for a longer award of alimony, which exceptional circumstances must be set out in writing by the court.
- The presumption in favor of awarding alimony for a long-term marriage is rebuttable.
- Alimony in a mid-term marriage is limited to 30 percent (formerly 50 percent) of the obligor's monthly net income.
- The sliding scale formula in the original bill that conformed alimony to the number of years of the marriage is removed.
- Alimony in a long-term marriage is limited to a maximum of 33 percent (formerly 50 percent) of the obligor's monthly net income.
- The court may order alimony exceeding the limits in the statutory system if there is a need, which determination must be set out in writing.
- The provisions related to proof of disability or reaching age 65 is removed from the original bill.
- A party seeking alimony must prove by clear and convincing evidence the other party has the ability to pay alimony.
- 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.
- The provision in the original bill that imputed income will be determined solely on the basis of federal tax returns is removed.
- The provision in the original bill that the court may only consider adultery if it caused significant depletion of marital assets or a reduction in marital income.
- The provision in the original bill that the determination of equitable distribution or child support may be used by the court to offset or otherwise consider an alimony obligation is removed.
- Alimony unconnected with dissolution under s. 61.09, F.S., is restored, and alimony awarded apart from dissolution will be calculated in accordance with s. 61.08, F.S.
- An alimony order will be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony.
- The provision in the original bill that, "[a] court terminating an alimony award based on the existence of a supportive relationship may not reserve jurisdiction to later reinstate alimony," is removed.
- The provision in the original bill that, "If the obligor remarries or resides with another person, the income and assets of the obligor's spouse or the person with whom the obligor resides may not be considered in a modification action regarding such obligor, except for purposes of discovery to determine the obligor's income or assets within the pooled income and assets," is removed.
- The provision in the original bill providing that a monetary award pursuant to a contempt hearing may not exceed the alimony obligation of the obligor is removed.
- If the court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later reduction or termination of child support, "unless the alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee."
- The original bill's provision codifying current law that the court may offset or otherwise consider an alimony obligation in determining equitable distribution or child support is removed.
- The amendments to the statutes apply to initial awards of and agreements for alimony entered before July 1, 2013, unless those agreements are "expressly non-modifiable."
- The amendments to the statute may also serve as a basis to modify an agreement for alimony if the agreement is 25 percent or more in duration or amount than an alimony award calculated under the amendments made by the bill.

- The schedule by which obligors may file for modifications set out in the original bill are changed.
- An obligor whose initial agreement or modification was made before July 1, 2013 may file a modification action according to the following schedule:
 - If the obligation is for permanent alimony, the obligor may file a modification on or after July 1, 2013.
 - If the obligation is for durational alimony of 10 years or more, the obligor may file a modification action on or after July 1, 2014.
 - An obligor who has agreed to durational alimony of between 5 and 10 years may file a modification action on or after July 1, 2015.
 - An obligor who has agreed to durational alimony of less than 10 years may file a modification action on or after July 1, 2015.

On March 14, 2013, the Judiciary Committee adopted 8 amendments and reported the bill favorably as a committee substitute. The amendments made the following changes:

- Language providing that "alimony may not be awarded in any other action" was removed.
- A scrivener's error was corrected.
- The burden of proof required to justify an award of durational alimony beyond the statutory guidelines was lowered to a preponderance of the evidence, and the need to show exceptional circumstances was removed.
- Non-modifiable marital settlement agreements are not subject to the retroactive provisions of the bill.
- Section 61.13, F.S., was amended to provide a legal presumption that equal time-sharing with a minor child is in the best interests of the child unless a threat to the child is shown, a parent is incarcerated, the distance makes time-sharing impracticable, or there is evidence of domestic violence.
- The definition of alimony was changed to include the term "spouse" and remove the language "after dissolution of a marriage."
- The definition of a "mid-term marriage" was changed to a marriage of between 12 and 20 years' duration, and the definition of a "short-term marriage" was changed to a marriage of less than 12 years.
- 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, absent exceptional circumstances.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.