HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	HB 7015	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Civil Justice Subcommittee; Metz and others	70 **Y's**	41 **N's**
COMPANION BILLS:	(CS/SB 1412)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

HB 7015 passed the House on April 18, 2013. The bill was amended by the Senate on April 26, 2013, and subsequently passed the House on April 26, 2013. The bill abolishes the *Frye* standard and adopts the *Daubert* standard relating to expert witness testimony.

An expert witness is a person who has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder during a hearing or trial. In evaluating whether testimony of a particular expert witness will be admitted in a Florida court, the court looks at whether the underlying basic principles of evidence are generally accepted within the scientific community. The standard is known as the *Frye* standard.

This bill rejects the *Frye* standard and provides a three-part test to determine whether expert testimony will be admitted in a particular case. This bill adopts a standard commonly referred to as the *Daubert* standard, which requires the court to determine if (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case.

This bill may have a fiscal impact on state government. See Fiscal Impact Section. The bill does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on June 5, 2013, ch. 2013-107, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Expert Witness

An expert witness is a person, who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder.[1] Previously, both Federal and Florida courts used the standard established in *Frye v. United States*[2] to determine whether scientific and expert testimony could be admitted into evidence. In *Frye*, the court established a test regarding the admission of expert testimony about new or novel theories. The court held that in order to introduce expert testimony deduced from a scientific principle or discovery, the principle or discovery "must be sufficiently established to have gained general acceptance in the particular field in which it belongs."[3] Under the *Frye* standard, a judge must determine that the basic underlying principles of scientific evidence have been tested and accepted by the scientific community.

The Federal Rules of Evidence were formally promulgated in 1975. Federal courts still continued to use the *Frye* standard until 1993, though, when the United States Supreme Court held in *Daubert*[4] that the *Frye* standard had been superseded by the Federal Rules of Evidence which provides in relevant part that:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.[5]

The Florida Evidence Code was established in 1979 and was patterned after the Federal Rules of Evidence. Section 90.102, F.S., provides that the Florida Evidence Code replaces and supersedes existing statutory or common law in conflict with its provisions. Section 90.702, F.S., relates to the admissibility of expert witness testimony and provides that:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.[6]

Florida courts still use the *Frye* standard, however, for expert testimony.[7] The Florida Supreme Court held in *Brim v. State* that "despite the federal adoption of a more lenient standard in *Daubert* . . . we have maintained the higher standard of reliability as dictated by *Frye*."[8]

In November 2007, the Florida Supreme Court decided *Marsh v. Valyou*.[9] In the case, the court addressed a conflict between the 1st and the 5th Florida District Courts of Appeal regarding expert

---

[1] Bryan A. Garner, Black's Law Dictionary, 9th Edition (West Publishing Co. 2009), "expert."
[2] *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).
[3] *Id.*at 1013.
[4] *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).
[5] Rule 702, Federal Rules of Evidence.
[6] Section 90.702, F.S.
[7] *Flanagan v. State*, 625 So.2d 827 (Fla. 1993); *Hadden v. State*, 690 So.2d 573 (Fla. 1997).
[8] *Brim v. State*, 695 So.2d 268, 271 (Fla. 1997).
[9] *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007).

testimony on fibromyalgia.[10] The court held that the testimony should have come in under pure opinion testimony[11] and in the alternative should have also come in under *Frye*. In the concurring opinion, Justice Anstead questioned why Florida still uses the *Frye* standard, stating that "we have never explained how *Frye* has survived the adoption of the rules of evidence."[12] Both the concurring and dissenting opinions concluded that *Frye* was superseded by the adoption of Florida's Evidence Code.

Effect of the Bill

This bill amends s. 90.702, F.S., to provide a standard regarding witness testimony that is more closely related to *Daubert* and the Federal Code of Evidence than *Frye*. This bill provides a three-part test to be used in determining whether an expert may testify. The test provides that an expert may testify in the particular field in which he or she is qualified in the form of an opinion or otherwise if:

- The testimony is based on sufficient facts or data,
- The testimony is the product of reliable principles and methods, and
- The witness has applied the principles and methods reliably to the facts.

The bill adopts the language of the federal rules of evidence that was interpreted by the U.S. Supreme Court in *Daubert v. Merrel Dow Pharmaceuticals, Inc.*, and subsequent U.S. Supreme Court cases that reaffirm expert witness testimony under the *Daubert* standard. The bill also amends s. 90.704, F.S., to apply the Daubert standard to all proposed expert testimony, including pure opinion testimony as discussed in *Marsh v. Valyou*.

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 change in standard to admit expert opinions in Florida courts may have an impact on the number of pre-trial hearings needed. The bill may necessitate an increase in judicial education as judges will be required to become more familiar with scientific principles. Over the long term, the change from Frye to Daubert likely will not substantially change the number of pre-trial hearings. In the nearer term, however, there is expected to be an increase as litigants test the limits of the new standard. It is unclear how long the transition will take to stabilize.

The Florida Prosecuting Attorneys Association has stated this bill will create an increase in workload as it will become a trial within a trial; requiring a much larger use of expert witnesses and court hearing time. The Prosecuting Attorneys Association has estimated a fiscal impact of $1.1 million. However, it is difficult for legislative staff to quantify a fiscal impact, in that well-established evidentiary standards in areas involving mental health, substance abuse, cognitive dysfunction, dual diagnosis, psychosis, and other areas litigated in some criminal cases may be expanded beyond the already extensive body of testimony and evidence currently litigated.

The Florida Public Defender Association has stated an insignificant fiscal impact due to this bill.

[10] Fibromyalgia is a chronic condition characterized by widespread pain in the muscles, ligaments and tendons, as well as fatigue and multiple tender points. *See* http://www.mayoclinic.com/health/fibromyalgia/DS00079 (last visited May 8, 2013).
[11] Pure opinion testimony is based on the expert's personal experience and training and does not have to meet the *Frye* standard. *See Flanagan*, 625 So.2d at 828.
[12] *Marsh* at 551.

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:

None.