



Civil Justice Subcommittee

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404 HOB

Will Weatherford
Speaker

Larry Metz
Chair

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 Land Trusts
SPONSOR(S): Rodríguez
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Ward <i>JW</i>	Bond <i>NB</i>
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A land trust is a form of ownership of real property in which a trustee holds legal title to the land and a beneficiary retains the power of direction over the trustee and thus retains the power to direct the trustee to sell or mortgage the real property. This bill:

- Better defines the difference between a land trust and a general trust, defining a land trust by the largely ministerial duties of the trustee.
- Codifies in the Florida Land Trust Act a number of land trust practices commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.
- Includes improvements based on the experience of Florida land trust practitioners that are intended to facilitate and encourage the use of land trusts in Florida real property transactions.

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

This bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida law recognizes a number of types of trusts. In most instances a trustee is obligated to use a high standard of care in investing and handling assets. There is a duty to account to the beneficiary and the assets of a trust might change. In contrast, the trustee of a land trust has legal title to a single asset for purposes of marketability, makes almost no discretionary decisions, and takes direction from the beneficiary regarding that asset. Thus, there is a distinct body of law that applies to land trusts already established, which this bill seeks to codify and standardize in Florida.

Land trusts were developed first in Illinois, which remains the model for the standard arrangement, in order to create a vehicle for simple transfer of title to property owned by a number of people. As opposed to other types of trusts in Florida, the trustee is a place-holder for ease of transfer and marketability of title. The trustee takes direction from the beneficiaries, and therefore has few if any fiduciary duties, nor any duties to account to the beneficiaries beyond sales transactions. This distinction is significant since Florida also has enacted the Florida Trust Code,¹ which imposes significant duties upon other types of trustees which have no real relevance to the duties of the land trust trustee described in the Florida Land Trust Act.²

Section 689.071, F.S., was enacted in 1963 as the Florida Land Trust Act, to validate the use of Illinois land trusts in Florida and to confirm the marketability of real property titles derived through a land trustee. Accordingly, this statute has always focused primarily on the authority of the land trustee to convey good title to third parties if the prior deed to the land trustee granted to the trustee certain powers to deal with and dispose of the property, commonly referred to as "deed powers."³ Acting primarily as a "title estoppel"⁴ statute, s. 689.071, F.S., protects third party grantees, mortgagees and lessees who rely on the statutory authority of the trustee based on those recorded deed powers, without requiring them to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement.

Although the words "land trust" appear in the section caption, the operation and effect of the deed powers provisions are not expressly limited to trusts based on the Illinois land trust model. Rather, the title provisions of the statute operate with respect to any recorded instrument to a trustee containing deed powers. As a result, it became a common practice in Florida to include s. 689.071, F.S., deed powers in conveyances to all trustees even if the trust was not intended to be a land trust in order to obtain the title estoppel benefits of the statute.

Over the years, s. 689.071, F.S., was amended to include other provisions pertaining to land trusts, such as expanding former s. 737.306, F.S., (limitation on personal liability of trustees) to cover land trustees in response to a case holding that those protections were not available to land trustees. In 2006 and 2007, s. 689.071, F.S., was expanded to add rudimentary governance provisions for land trusts and a procedure for appointing successor land trustees, and the expanded section was renamed the "Florida Land Trust Act." The definition of the term "land trust" by reference to inclusion of deed powers in the conveyance deed to the trustee appeared in the statute for the first time in 2007.

¹ Chapter 736, F.S.

² Section 689.071, et seq., F.S.

³ See s. 679.071(3), F.S.

⁴ "Title estoppel" is the representation to a bona fide purchaser by a land trustee that he or she is fully able to transfer the legal title to the subject property, that the transferee is protected from title assaults by the beneficiaries of the trust, that the beneficiaries need not be disclosed, that the trust document need not be disclosed, and other assurances that the purchaser and others may safely deal with the trustee.

Effect of the Bill

A. General Overview

This bill clarifies the distinction between a land trust governed by s. 689.071, F.S., and other express trusts governed by the Florida Trust Code,⁵ yet preserve the title estoppel benefits of the existing statute for any conveyance to a trustee containing deed powers. To accomplish this objective, this bill:

- Defines land trusts based on the functional scope of the land trustee's duties, although deed powers would remain an essential element of a Florida land trust; and
- Relocates all the title estoppel provisions of s. 689.071, F.S., to a newly created section⁶ which will remain equally applicable to any conveyance containing deed powers⁷ to a trustee of any trust.

A transitional provision makes the new functional land trust definition apply only to trusts created on or after the effective date of the bill, and a trust existing before the effective date is classified as a land trust based on the intentions of the parties as expressed in or discerned from the existing trust agreement.

The relocated title estoppel provisions in the new section apply to any real property conveyed to a trustee at any time by an instrument containing deed powers, regardless of whether the trust is a land trust or not. By separating the title estoppel statute from the land trust statute in this way, this bill does not change the results intended by the parties to any trust agreement existing on the date that the bill becomes effective.

In addition to transferring the title estoppel provisions to a new section,⁸ the bill also codifies in amended s. 689.071, F.S., a number of land trust practices and principles commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.

B. Point by Point Analysis

1. Title Estoppel Provisions - Creation of s. 689.073, F.S.

The marketability of title, and sometimes anonymity of the beneficial owner, is primary reasons for a land trust. Anyone who deals with the trustee must be assured that the trustee has legal ownership and full authority to deal with the property, and must also be assured that any claims between the land trustee and the beneficiaries will not affect the transaction or the grantee.

Currently these assurance provisions, called "title estoppel" provisions are set out in ss. 689.071(3), (4), and (5), F.S. The bill relocates the title estoppel provisions to a new section entitled, "Powers conferred on trustee in recorded instrument,"⁹ and creates a new subsection, s. 689.073, F.S.

In moving the provisions to the new statute,¹⁰ changes were made to:

- Remove language regarding the vesting of both "legal and equitable title" in the trustee;

⁵ Chapter 736, F.S.

⁶ Section 689.073, F.S. is created.

⁷ "Deed powers," as used in this analysis refer to the language of s. 689.071(3), F.S., which is, "to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument."

⁸ Section 689.073, F.S.

⁹ Section 1 of the bill relocates and slightly revises ss. 689.071(3), (4) and (5), F.S., moving them to a new s. 689.073, F.S.. Subsections (4) and (5) are simply relocated as-is and renumbered s. 689.073(2) and (3), F.S.

¹⁰ As revised, s. 689.071(3), F.S., becomes s. 689.073(1), F.S.

- Remove the reference to real property "in this state;"¹¹
- Relocate to s. 689.073(5), F.S., certain existing criteria for applicability; and
- Simplify the remaining language.

The bill continues to vest in a trustee full power and authority to deal with the property as provided in the deed powers granted in the deed. The exclusion for instruments governed by s. 689.07, F.S. [existing s. 689.071(12), F.S.] is relocated to s. 689.073(4), F.S., changing only the words "this act" to "this section."

Currently, the title estoppel provisions are operative whether or not the conveyance deed refers to the beneficiaries or any unrecorded trust agreement.¹² The bill creates s. 689.073(5), F.S., which:

- Carries forward the provision that conveyance by the trustee is free of claims of beneficiaries;
- Expressly provides that the title estoppel provisions work regardless of the provisions of any unrecorded trust agreement and regardless of whether the trust is a land trust or an express trust; and
- Clarifies that the title estoppel section applies both to deeds recorded after the effective date of the proposed amendments and to deeds recorded under the present statute.¹³

This provision confirms that the relocation of the title estoppel section is not intended to change the legal effect of any previous conveyances under the present statute, and for good measure all such previous conveyances are validated as vesting the trustee with the requisite deed powers.

2. Definition of "Land Trust" - Revisions to s. 689.071(2), F.S.

The bill revises the remaining provisions of s. 689.071, F.S., which were not moved to the new section.¹⁴ The revised definition of "land trust"¹⁵ still requires a conveyance to a trustee by a recorded instrument containing deed powers, but beginning with the effective date of the bill this definition focuses on the key functional distinction between a land trust and other express trusts: that a land trustee functions almost entirely as the agent of the beneficiaries or the person holding the power of direction under the trust agreement, whereas a trustee who is subject to the Florida Trust Code in ch. 736, F.S., has more extensive fiduciary duties and responsibilities to the trust beneficiaries, along with more extensive potential liability if the trustee fails to perform the trustee's discretionary duties prudently.

A land trustee has a fiduciary relationship to the land trust beneficiaries and the persons holding the "power of direction" over the actions of the land trustee, just as any agent is bound as a fiduciary to the principal for whom the agent acts.¹⁶ However, in practice, land trustees are rarely delegated discretionary duties under a land trust agreement, beyond ministerial and administrative matters.¹⁷ This lack of duties is a logical parallel to the exemption that land trustees enjoy from ch. 736, F.S., responsibilities and liabilities. The bill makes clear this practical distinction in the revised definition of a land trust¹⁸ by stating that the trustee has limited duties as set out in the statute.

For trusts created on or after the effective date of the bill, the revised definition will limit the duties of a trustee of a "land trust" to the following:

¹¹ This provision confirms that out-of-state lands may be held in Florida land trust regimes.

¹² Section 689.071(3), F.S.

¹³ Section 689.071(3), F.S.

¹⁴ Section 689.073, F.S.

¹⁵ Section 689.071(2)(c), F.S.,

¹⁶ *Raborn v. Menotte*, 974 So.2d 328 (Fla. 2008).

¹⁷ "The trustee is a mere vessel of title." *Brigham v. Brigham*, 11 So.3d 374 (Fla. 3d DCA 2009).

¹⁸ Section 689.071(2)(c), F.S.

- The duty to exercise the trustee's deed powers as directed by the beneficiary or by the holder of the power of direction (i.e., this is the agent's fiduciary duty to follow the principal's directions);
- The duty to dispose of the trust property at the termination of the trust (i.e., the classic "active" duty that historically saved Illinois land trusts from the statute of uses);
- The duty to perform ministerial and administrative functions delegated to the trustee; and
- The duties required of certain timeshare trustees by ch. 721, F.S.¹⁹

If the trustee's duties exceed the foregoing limited duties and the trust is created after the effective date of the proposed amendment, then the trust will not be treated as a land trust and will not be excluded from the operation of ch. 736, F.S.²⁰

Because the title estoppel provisions of the statute operate on any conveyance containing deed powers, the classification of the trust as a "land trust" will have no effect on the title to any real property held by the trustee.

3. Other Definitions - Revisions to s. 689.071(2), F.S.

Besides revising the definition of "land trust," section 2 of the bill adds and clarifies some other definitions of lesser significance in s. 689.071(2), F.S.:

- The definition for "holder of the power of direction" was revised and shortened to "power of direction" because "holder of" was not used consistently in the statute;
- The phrase "person or entity" was shortened to "person" in numerous places (beginning with the definition of "beneficiary") because the statutory definition of "person" includes entities;
- New definitions were created for some basic trust concepts, such as "trust agreement," "trust property" and "recorded instrument" (the latter being a cross-reference to the relocated deed powers provision now found in s. 689.073(1), F.S.);
- "Trustee" is redefined so that the term will work in the "switchbox" provision to mean the trustee of a land trust or the trustee of another trust. For this reason, numerous references to "trustee" in revised s. 689.071, F.S., will be changed to "trustee of a land trust" where that meaning is intended;

4. Vesting of "Legal and Equitable Title" Revisions to s. 689.071(3), F.S.

The bill continues the existing statutory statement that a land trustee is vested with both legal and equitable title to the trust property. This vesting of "legal and equitable title" provision is a land trust characteristic imported from Illinois, and therefore it does not appear in the relocated title estoppel provisions in s. 689.073, F.S., that universally apply to any type of trust with deed powers. Although the "legal and equitable" language has been excised from a number of other subsections of s. 689.071, F.S., to avoid potential circularity, s. 689.071(3), F.S., will continue to contain the operative language regarding vesting of legal and equitable title in the land trustee.

The bill makes technical revisions to s. 689.071(3), F.S.:

- Because new s. 689.073, F.S., now defines the requirements for a "recorded instrument" containing deed powers, the bill does not repeat this in the new s. 689.071(3), F.S.;
- The statement that the recorded instrument does not by itself create an entity has been relocated to the end of s. 689.071(3), F.S., instead of appearing in the definition of "land trust."

¹⁹ Section 721.08, F.S. provides that time share accommodations may be placed into a trust. This will be addressed in detail below, in regard to the effect of this statute.

²⁰ Chapter 736 is the Florida Trust Code and applies to express trusts.

- Other housekeeping edits to s. 689.071(3), F.S., concern the consistent use of defined terms such as “land trust,” “trust agreement” and “trust property.”

5. Statute of Uses and Doctrine of Merger - Revisions to ss. 689.071(4) and (5), F.S.

When s. 689.071, F.S., was first enacted for the purpose of validating the use of Illinois land trusts in Florida, one commonly assumed result was that land trusts would not be executed as “passive trusts” or “dry trusts” by the statute of uses, which is codified in Florida in s. 689.09, F.S. The bill makes that result explicit with respect to a land trust, overriding not only s. 689.09, F.S., but also the common-law statute of uses.

New subsection 689.071(5), F.S., overrides the doctrine of merger with respect to a land trust, so that a land trust will not be extinguished if the trustee is the sole beneficiary. Former s. 689.071(5), F.S., is one of the title estoppel provisions relocated verbatim to s. 689.073, F.S.

6. Personal Property Option-- Revisions to s. 689.071(6), F.S.

Currently section 689.071, F.S., provides that the recorded instrument may define and declare the interests of land trust beneficiaries as personal property under Florida law.²¹ The bill clarifies that this designation of personal property must be made in the recorded instrument or the trust agreement, or it will be considered real property.

Subsection 689.071(6), F.S., is changed in one regard: the optional personal property declaration can be made in the recorded instrument or in the trust agreement. This change is consistent with the relocation of the title estoppel provisions to new s. 689.073, F.S., which governs title matters that depend on the contents of the recorded instrument. Whether the beneficial interests are real property or personal property does not affect the nature of the title vested in the trustee or the ability of third parties to acquire good title to the trust property from the trustee in accordance with the powers contained in the recorded instrument.

As noted above, revised s. 689.071(6), F.S., contains edits for the consistent usage of defined terms such as “land trust” and “trust agreement.”

7. Beneficiary Provisions-- Revisions to s. 689.071(8), F.S.

Currently, customary provisions in land trusts are based upon treatises by Illinois land trust authorities, particularly Kenoe on Land Trusts.²² The bill revises 689.071(8), F.S., in a number of respects to codify these land trust practices.

Revised s. 689.071(8)(a), F.S., is a non-substantive combination of former paragraphs (a), (b) and (d), intended to consolidate similar provisions and make paragraph numbers (b) and (d) available for other new provisions. The bill adds s. 689.071(8)(b), F.S., as a statutory endorsement of flexible beneficial ownership techniques described in the Kenoe treatise. The purpose of including these provisions directly in the Land Trust Act is to increase public awareness that such techniques are available without making reference to the treatise, thereby promoting the usage of land trusts in Florida generally.

The bill revises s. 689.071(8)(c), F.S., to reconcile the Land Trust Act with the U.C.C. Article 9 exclusion of interests in real property.²³ Caselaw²⁴ holds that a beneficial interest in a land trust is a general intangible within the scope of the Florida Uniform Commercial Code, and this result is codified in the present version of s. 689.071(8)(c), F.S., which provides that U.C.C. Article 9 governs the

²¹ Except of course for the stamp tax provision in s. 201.02(4), F.S.

²² Henry W. Kenoe wrote a number of treatises on land trusts which are now out of print.

²³ These provisions are found in s. 679.1091(4)(k), F.S.

²⁴ *In re Cowser*, 14 B.R. 335 (Bankr.S.D.Fla. 1981).

perfection of a security interest in a beneficial interest in a land trust. However, if the beneficial interest is defined as real property under s. 689.071(6), F.S., then there is a possible contradiction between the Land Trust Act (which says Article 9 applies to beneficial interests) and the U.C.C. (which says Article 9 excludes real property interests).

Currently ch. 721, F.S. (the Florida Vacation Plan and Timeshare Act) authorizes the creation and marketing of timeshare estates through trusts.²⁵ Because timeshare estates are defined as real property²⁶ the purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the timeshare estate. However, if the timeshare estate is created as a beneficial interest in a timeshare trust a land trust is created. As a result, two different statutes prescribe two different methods of perfection, causing possible confusion in the mechanics of perfecting the lien.²⁷

The bill revises s. 689.071(8)(c), F.S., to resolve this apparent contradiction by clarifying that the U.C.C. governs perfection if the beneficial interest in a land trust is declared to be personal property (as was the case in *Cowser*), but that a mortgage instrument recorded in the real estate records is the proper method of perfection if the beneficial interest in a land trust is declared to be real property. In the latter case, the proper county for recording the mortgage may be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument; otherwise the location of the trust property determines the proper county for recording the mortgage. The bill provides a transition rule²⁸ to provide for the continuation of perfection for any U.C.C. financing statement that may have been filed before the effective date of this clarification. It is an abbreviated version of the transition rules that were included in Revised U.C.C. Article 9 in 2001.

The bill revises the existing last sentence of s. 689.071(8)(c), F.S., to state more clearly that a lien or security interest perfected against a beneficial interest in a land trust does not affect in any way the legal or equitable title of the land trustee to the trust property. New s. 689.071(8)(d), F.S., makes explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in existing s. 689.071(8)(c), F.S: the trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Section 689.071(8)(e), F.S., is also revised to clarify this same point: documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee or the deed powers granted to the trustee in the recorded instrument.

Sections 689.071(8)(f) and (g), F.S., as well as other parts of s. 689.071(8), F.S., have been edited for consistent usage of the defined terms "land trust," "recorded instrument," "trust agreement," and "trust property."

The bill adds s. 689.071(8)(i), F.S., which is intended to end the reported occasional practice by some judges of appointing a guardian ad litem to represent the interests of land trust beneficiaries in a foreclosure or other litigation affecting title to the trust property. Because a land trustee is vested with both legal and equitable title to the trust property, joinder of the land trustee in the action is sufficient without incurring the additional expense of a guardian ad litem.

8. Successor Trustee Provisions-- Revisions to s. 689.071(9), F.S.

Most of the revisions to s. 689.071(9), F.S., are non-substantive edits for consistent usage of defined terms and modernization of language (e.g., replacing "office of the recorder of deeds" with "public

²⁵ See s. 721.08(2)(c)4, F.S.

²⁶ See s. 721.05(34), F.S.,

²⁷ The conflict exists between UCC Article 9 and the Land Trust Act.

²⁸ See the newly created s. 689.071(15), F.S.

records"). The bill deletes s. 689.071(9)(a), F.S., because the "switchbox" provision in subsection 689.071(12) globally addresses the inapplicability of chapter 736 to land trusts.

The existing text of s. 689.071(9), F.S., uses the expression "each successor trustee" to avoid the longer phrase "the successor trustee or trustees." Unfortunately, it is possible to misread the shorter phrase to mean "each and every successor trustee" in a series of successors.²⁹ The longer expression is clearer and replaces the shorter one.

Existing s. 689.071(9)(f), F.S., provides that the beneficiaries may direct the land trustee to convey the trust property to another trustee. The bill changes this paragraph to provide that this direction to convey could also come from the person holding the power of direction.

9. Trustee as Creditor-- Revisions to s. 689.071(10), F.S.

The bill revises s. 689.071(10)(a), F.S., to include a conforming reference to a mortgage (as well as a security interest) against a beneficial interest in a land trust. Other non-substantive edits include consistent usage of defined terms and the deletion of "or entity" after "person."

10. Notices to Trustee Provisions-- Revisions to s. 689.071(11), F.S.

The bill adds a new subsection to assure that the right parties receive any third-party notices concerning property held in a land trust by requiring that notice to a land trustee include certain identifying information if it appears in the recorded instrument.

11. "Switchbox" Provision; Timeshare Trusts-- Revisions to s. 689.071(12), F.S.

The revised "land trust" definition discussed above contains a cross-reference to a transition rule that appears in s. 689.071(12), F.S., sometimes referred to below as the "switchbox" provision. This transition rule exempts existing land trusts from the new duties-based test in s. 689.071(2)(c), F.S.; rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement. As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee, such that those existing trusts would meet the new duties-based "land trust" definition even if it were applied to them retroactively. But because there are some land trust agreements that vest the land trustee with greater discretion, the switchbox provision does not apply the duties-based test to any existing land trust agreement that says the trust is a "land trust" or clearly was intended to be a land trust. In this way, existing obvious land trusts are "grandfathered" into the land trust statute.

There are two necessary exceptions to the switchbox provision: (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied only to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or adds too many duties beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of ch. 736, F.S., but there is no effect on the title to the trust property.

As noted above in the discussion of timeshare interests, current statutes³⁰ authorize the use of trusts for the creation and marketing of timeshare estates; and specify similar requirements for using trusts for multi-site vacation clubs.³¹ These statutes specify that certain provisions of the Florida Trust Code

²⁹ E.g., existing paragraph s. 689.071(9)(c), F.S., requires that "each successor trustee shall file a declaration of appointment."

³⁰ Chapter 721, F.S.

³¹ Section 721.53(1)(e), F.S.

govern the liability of the trustees of such qualifying trusts,³² and these provisions are usually recited in the Chapter 721 trust agreements. If such an existing timeshare trust were created as a land trust, however, then the trust agreement would contain provisions stating that the trust is a land trust (making it a land trust³³ but would also refer to governance by these specific provisions of Chapter 736.

Accordingly, the "switchbox" provision³⁴ expressly ignores these references to Chapter 736 in the trust agreement of a trust qualifying as a timeshare estate trust³⁵ or a vacation club trust.³⁶

Similar considerations under ch. 721, F.S., led to the inclusion in the revised s. 689.071(2)(c), F.S., a list of limited duties for land trustees. Most of the recited ch. 736, F.S., provisions that apply to timeshare trusts³⁷ pertain to limitations on the liability of the trustee, but one of them³⁸ also imposes duties on a trustee. In addition, ch. 721, F.S., also directly imposes certain duties on the trustee of a timeshare estate trust or a vacation club trust, although arguably those duties fall into the ministerial and administrative category. Further, it is conceivable that ch. 721, F.S., might be amended in the future to impose other duties on timeshare trustees. To preserve the utility of land trusts as a structure for organizing timeshare estate trusts and vacation club trusts qualifying under ch. 721, F.S., revised s. 689.071(2)(c), F.S., simply includes in the list of limited land trustee duties any duties that are imposed on the trustee under ch. 721, F.S.

12. Florida Trust Code - Scope Provision-- Revisions to s. 736.0102, F.S.

The bill includes a conforming amendment to s. 736.0102, F.S., of the Florida Trust Code. The bill divides this section into two logical subsections, and a third subsection is added to address the exclusion of land trusts from the Florida Trust Code. New s. 736.0102(3), F.S., provides that the Trust Code does not apply to land trusts under s. 689.071, F.S., except to the extent provided in subsection 689.071(7), F.S., of the Land Trust Act and in the two provisions of ch. 721, F.S., that apply parts of ch. 736, F.S., to timeshare trusts.

The bill adds s. 736.0102(3), F.S., to provide that a Trust Code trust remains a Trust Code trust (and does not become a land trust) regardless of any amendment or change in asset composition or utilization of a sub trust.

B. SECTION DIRECTORY:

Section 1 creates s. 689.073, F.S., from portions of s. 689.071, F.S., regarding powers conferred on the trustee of a land trust.

Section 2 amends s. 689.071, F.S., regarding land trusts, definitions and law.

Section 3 amends s. 736.0102, F.S., a portion of the trust code, to exclude land trusts.

Section 4 is a direction regarding the effective date.

Section 5 provides that this bill is effective upon becoming law.

³² See specifically, ss. 736.08125, 736.08163, 736.1013 and 736.1015, F.S.

³³ See s. 689.071(14)(b)1, F.S.

³⁴ See s. 689.071(12)(b), F.S.

³⁵ See s. 721.08(2)(c)4, F.S.

³⁶ See s. 721.53(1)(e), F.S.

³⁷ See ch. 721, F.S.,

³⁸ See s. 736.08163, F.S., concerning environmental matters.

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:

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

D. FISCAL COMMENTS:

None.

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:

Lines 4 and 5 of the title may not be sufficiently tied to the substance of the bill. Lines 24 through 26 appear to be an inaccurate description of the section described, which, according to the sequence of the title, would be lines 301 through 344.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to land trusts; creating s. 689.073,
 3 F.S.; revising provisions relating to vesting of
 4 ownership in a trustee; revising rights, liabilities,
 5 and duties of land trust beneficiaries; providing
 6 exclusion and applicability; amending s. 689.071,
 7 F.S.; revising and providing definitions; revising
 8 provisions relating to land trust transfers of real
 9 property and vesting of ownership in a trustee;
 10 prohibiting the operation of the statute of uses to
 11 execute a land trust or to vest the trust property
 12 under certain conditions; prohibiting the operation of
 13 the doctrine of merger to execute a land trust or to
 14 vest the trust property under certain conditions;
 15 providing conditions under which a beneficial interest
 16 is deemed real property; revising and providing
 17 rights, liabilities, and duties of land trust
 18 beneficiaries; authorizing certain beneficial
 19 ownership methods; providing for the perfection of
 20 security documents; providing that a trustee's legal
 21 and equitable title to the trust property is separate
 22 and distinct from the beneficiary's beneficial
 23 interest in the land trust and the trust property;
 24 prohibiting a lien, judgment, mortgage, security
 25 interest, or other encumbrance against one interest
 26 from automatically attaching to another interest;
 27 providing that the appointment of a guardian ad litem
 28 is not necessary in certain foreclosure litigation

29 affecting the title to trust property of a land trust;
 30 conforming provisions to changes made by the act;
 31 deleting provisions relating to the applicability of
 32 certain successor trustee provisions; providing notice
 33 requirements; providing for the determination of
 34 applicable law for certain trusts; providing for
 35 applicability relating to Uniform Commercial Code
 36 financing statements; providing requirements for
 37 recording effectiveness; amending s. 736.0102, F.S.;

38 revising and providing scope of the Florida Trust
 39 Code; providing a directive to the Division of Law
 40 Revision and Information; providing an effective date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Section 689.073, Florida Statutes, is created,
 45 and present subsections (4) and (5) of section 689.071, Florida
 46 Statutes, are transferred and renumbered as subsections (2) and
 47 (3), respectively, of section 689.073, Florida Statutes, and
 48 amended, to read:

49 689.073 Powers conferred on trustee in recorded
 50 instrument.-

51 (1) OWNERSHIP VESTS IN TRUSTEE.-Every conveyance, deed,
 52 mortgage, lease assignment, or other instrument heretofore or
 53 hereafter made, hereinafter referred to as the "recorded
 54 instrument," transferring any interest in real property,
 55 including, but not limited to, a leasehold or mortgagee
 56 interest, to any person or any corporation, bank, trust company,

57 or other entity duly formed under the laws of its state of
 58 qualification, which recorded instrument designates the person,
 59 corporation, bank, trust company, or other entity "trustee" or
 60 "as trustee" and confers on the trustee the power and authority
 61 to protect, to conserve, to sell, to lease, to encumber, or
 62 otherwise to manage and dispose of the real property described
 63 in the recorded instrument, is effective to vest, and is
 64 declared to have vested, in such trustee full power and
 65 authority as granted and provided in the recorded instrument to
 66 deal in and with such property, or interest therein or any part
 67 thereof, held in trust under the recorded instrument.

68 ~~(2)(4)~~ NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee,
 69 transferee, assignee, or person obtaining satisfactions or
 70 releases or otherwise in any way dealing with the trustee with
 71 respect to the real property or any interest in such property
 72 held in trust under the recorded instrument, as hereinabove
 73 provided for, is not obligated to inquire into the
 74 identification or status of any named or unnamed beneficiaries,
 75 or their heirs or assigns to whom a trustee may be accountable
 76 under the terms of the recorded instrument, or under any
 77 unrecorded separate declarations or agreements collateral to the
 78 recorded instrument, whether or not such declarations or
 79 agreements are referred to therein; or to inquire into or
 80 ascertain the authority of such trustee to act within and
 81 exercise the powers granted under the recorded instrument; or to
 82 inquire into the adequacy or disposition of any consideration,
 83 if any is paid or delivered to such trustee in connection with
 84 any interest so acquired from such trustee; or to inquire into

85 | any of the provisions of any such unrecorded declarations or
 86 | agreements.

87 | (3)~~(5)~~ BENEFICIARY CLAIMS.—All persons dealing with the
 88 | trustee under the recorded instrument as hereinabove provided
 89 | take any interest transferred by the trustee thereunder, within
 90 | the power and authority as granted and provided therein, free
 91 | and clear of the claims of all the named or unnamed
 92 | beneficiaries of such trust, and of any unrecorded declarations
 93 | or agreements collateral thereto whether referred to in the
 94 | recorded instrument or not, and of anyone claiming by, through,
 95 | or under such beneficiaries. However, this section does not
 96 | prevent a beneficiary of any such unrecorded collateral
 97 | declarations or agreements from enforcing the terms thereof
 98 | against the trustee.

99 | (4) EXCLUSION.—This section does not apply to any deed,
 100 | mortgage, or other instrument to which s. 689.07 applies.

101 | (5) APPLICABILITY.—The section applies without regard to
 102 | whether any reference is made in the recorded instrument to the
 103 | beneficiaries of such trust or to any separate collateral
 104 | unrecorded declarations or agreements, without regard to the
 105 | provisions of any unrecorded trust agreement or declaration of
 106 | trust, and without regard to whether the trust is governed by s.
 107 | 689.071 or chapter 736. This section applies both to recorded
 108 | instruments that are recorded after the effective date of this
 109 | act and to recorded instruments that were previously recorded
 110 | and governed by similar provisions formerly contained in s.
 111 | 689.071(3), and any such recorded instrument purporting to
 112 | confer power and authority on a trustee under such formerly

113 effective provisions of 689.071(3) is valid and has the effect
 114 of vesting full power and authority in such trustee as provided
 115 in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended
 117 by this act, is amended to read:

118 689.071 Florida Land Trust Act.—

119 (1) SHORT TITLE.—This section may be cited as the "Florida
 120 Land Trust Act."

121 (2) DEFINITIONS.—As used in this section, the term:

122 (a) "Beneficial interest" means any interest, vested or
 123 contingent and regardless of how small or minimal such interest
 124 may be, in a land trust which is held by a beneficiary.

125 (b) "Beneficiary" means any person or entity having a
 126 beneficial interest in a land trust. A trustee may be a
 127 beneficiary of the land trust for which such trustee serves as
 128 trustee.

129 ~~(c) "Holder of the power of direction" means any person or~~
 130 ~~entity having the authority to direct the trustee to convey~~
 131 ~~property or interests, execute a mortgage, distribute proceeds~~
 132 ~~of a sale or financing, and execute documents incidental to the~~
 133 ~~administration of a land trust.~~

134 (c)(d) "Land trust" means any express written agreement or
 135 arrangement by which a use, confidence, or trust is declared of
 136 any land, or of any charge upon land, under which the title to
 137 real property, including, but not limited to, a leasehold or
 138 mortgagee interest, both legal and equitable, is vested in a
 139 trustee by a recorded instrument that confers on the trustee the
 140 power and authority prescribed in s. 689.073(1) and under which

141 | the trustee has no duties other than the following:

142 | 1. The duty to convey, sell, lease, mortgage, or deal with
 143 | the trust property, or to exercise such other powers concerning
 144 | the trust property as may be provided in the recorded
 145 | instrument, in each case as directed by the beneficiaries or by
 146 | the holder of the power of direction;

147 | 2. The duty to sell or dispose of the trust property at
 148 | the termination of the trust;

149 | 3. The duty to perform ministerial and administrative
 150 | functions delegated to the trustee in the trust agreement or by
 151 | the beneficiaries or the holder of the power of direction; or

152 | 4. The duties required of a trustee under chapter 721, if
 153 | the trust is a timeshare estate trust complying with s.
 154 | 721.08(2)(c)4. or a vacation club trust complying with s.
 155 | 721.53(1)(e);

156 |
 157 | However, the duties of the trustee of a land trust created
 158 | before the effective date of this act may exceed the limited
 159 | duties listed in this paragraph to the extent authorized in
 160 | subsection (12) ~~subsection (3)~~. ~~The recorded instrument does not~~
 161 | ~~itself create an entity, regardless of whether the relationship~~
 162 | ~~among the beneficiaries and the trustee is deemed to be an~~
 163 | ~~entity under other applicable law.~~

164 | (d) "Power of direction" means the authority of a person,
 165 | as provided in the trust agreement, to direct the trustee of a
 166 | land trust to convey property or interests, execute a lease or
 167 | mortgage, distribute proceeds of a sale or financing, and
 168 | execute documents incidental to the administration of a land

169 trust.

170 (e) "Recorded instrument" has the same meaning as provided
 171 in s. 689.073(1).

172 (f) "Trust agreement" means the written agreement
 173 governing a land trust or other trust, including any amendments.

174 (g) "Trust property" means any interest in real property,
 175 including, but not limited to, a leasehold or mortgagee
 176 interest, conveyed by a recorded instrument to a trustee of a
 177 land trust or other trust.

178 (h)~~(e)~~ "Trustee" means the person or entity designated in
 179 a recorded instrument or trust agreement ~~trust instrument to~~
 180 ~~hold legal and equitable title to the trust~~ property of a land
 181 trust or other trust.

182 (3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument
 183 ~~conveyance, deed, mortgage, lease assignment, or other~~
 184 ~~instrument heretofore or hereafter made, hereinafter referred to~~
 185 ~~as the "recorded instrument," transferring any interest in real~~
 186 property trustee of a land trust and conferring upon the trustee
 187 the power and authority prescribed in s. 689.073(1), in this
 188 ~~state, including, but not limited to, a leasehold or mortgagee~~
 189 ~~interest, to any person or any corporation, bank, trust company,~~
 190 ~~or other entity duly formed under the laws of its state of~~
 191 ~~qualification, in which recorded instrument the person,~~
 192 ~~corporation, bank, trust company, or other entity is designated~~
 193 ~~"trustee" or "as trustee,"~~ whether or not reference is made in
 194 the recorded instrument to the beneficiaries of such land trust
 195 or to the trust agreement or any separate collateral unrecorded
 196 declarations or agreements, is effective to vest, and is hereby

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197 | declared to have vested, in such trustee both legal and
 198 | equitable title, and full rights of ownership, over the trust
 199 | ~~real~~ property or interest therein, with full power and authority
 200 | as granted and provided in the recorded instrument to deal in
 201 | and with the trust property or interest therein or any part
 202 | thereof. The recorded instrument does not itself create an
 203 | entity, regardless of whether the relationship among the
 204 | beneficiaries and the trustee is deemed to be an entity under
 205 | other applicable law; provided, the recorded instrument confers
 206 | ~~on the trustee the power and authority to protect, to conserve,~~
 207 | ~~to sell, to lease, to encumber, or otherwise to manage and~~
 208 | ~~dispose of the real property described in the recorded~~
 209 | ~~instrument.~~

210 | (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the
 211 | statute of uses do not execute a land trust or vest the trust
 212 | property in the beneficiary or beneficiaries of the land trust,
 213 | notwithstanding any lack of duties on the part of the trustee or
 214 | the otherwise passive nature of the land trust.

215 | (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of
 216 | merger does not extinguish a land trust or vest the trust
 217 | property in the beneficiary or beneficiaries of the land trust,
 218 | regardless of whether the trustee is the sole beneficiary of the
 219 | land trust.

220 | (6) PERSONAL PROPERTY.—In all cases in which the recorded
 221 | instrument or the trust agreement, as hereinabove provided,
 222 | contains a provision defining and declaring the interests of
 223 | beneficiaries of a land trust ~~thereunder~~ to be personal property
 224 | only, such provision is ~~shall be~~ controlling for all purposes

225 when such determination becomes an issue under the laws or in
 226 the courts of this state. If no such personal property
 227 designation appears in the recorded instrument or in the trust
 228 agreement, the interests of the land trust beneficiaries are
 229 real property.

230 (7) TRUSTEE LIABILITY.—In addition to any other limitation
 231 on personal liability existing pursuant to statute or otherwise,
 232 the provisions of ss. 736.08125 and 736.1013 apply to the
 233 trustee of a land trust created pursuant to this section.

234 (8) LAND TRUST BENEFICIARIES.—

235 (a) Except as provided in this section, the beneficiaries
 236 of a land trust are not liable, solely by being beneficiaries,
 237 under a judgment, decree, or order of court or in any other
 238 manner for a debt, obligation, or liability of the land trust.

239 ~~(b)~~ Any beneficiary acting under the trust agreement of a
 240 land trust is not liable to the land trust's trustee or to any
 241 other beneficiary for the beneficiary's good faith reliance on
 242 the provisions of the trust agreement. A beneficiary's duties
 243 and liabilities under a land trust may be expanded or restricted
 244 in a trust agreement or beneficiary agreement.

245 (b)1. If provided in the recorded instrument, in the trust
 246 agreement, or in a beneficiary agreement:

247 a. A particular beneficiary may own the beneficial
 248 interest in a particular portion or parcel of the trust property
 249 of a land trust;

250 b. A particular person may be the holder of the power of
 251 direction with respect to the trustee's actions concerning a
 252 particular portion or parcel of the trust property of a land

253 | trust; and

254 | c. The beneficiaries may own specified proportions or

255 | percentages of the beneficial interest in the trust property or

256 | in particular portions or parcels of the trust property of a

257 | land trust.

258 | 2. Multiple beneficiaries may own a beneficial interest in

259 | a land trust as tenants in common, joint tenants with right of

260 | survivorship, or tenants by the entireties.

261 | (c) If a beneficial interest in a land trust is determined

262 | to be personal property as provided in subsection (6), chapter

263 | 679 applies to the perfection of any security interest in that a

264 | beneficial interest ~~in a land trust~~. If a beneficial interest in

265 | a land trust is determined to be real property as provided in

266 | subsection (6), to perfect a lien or security interest against

267 | that beneficial interest, the mortgage, deed of trust, security

268 | agreement, or other similar security document must be recorded

269 | in the public records of the county that is specified for such

270 | security documents in the recorded instrument or in a

271 | declaration of trust or memorandum for such security document

272 | recorded in the public records of the same county as the

273 | recorded instrument. If no county is specified for recording

274 | such security documents, the proper county for recording such a

275 | security document against a beneficiary's interest in any trust

276 | property is the county where the trust property is located. The

277 | perfection of a lien or security interest in a beneficial

278 | interest in a land trust does not affect, attach to, or encumber

279 | the legal or equitable title of the trustee in the trust

280 | property and does not impair or diminish the authority of the

281 trustee under the recorded instrument, and parties dealing with
 282 the trustee are not required to inquire into the terms of the
 283 unrecorded trust agreement or any lien or security interest
 284 against a beneficial interest in the land trust.

285 (d) The trustee's legal and equitable title to the trust
 286 property of a land trust is separate and distinct from the
 287 beneficial interest of a beneficiary in the land trust and in
 288 the trust property. A lien, judgment, mortgage, security
 289 interest, or other encumbrance attaching to the trustee's legal
 290 and equitable title to the trust property of a land trust does
 291 not attach to the beneficial interest of any beneficiary; and
 292 any lien, judgment, mortgage, security interest, or other
 293 encumbrance against a beneficiary or beneficial interest does
 294 not attach to the legal or equitable title of the trustee to the
 295 trust property held under a land trust, unless the lien,
 296 judgment, mortgage, security interest, or other encumbrance by
 297 its terms or by operation of other law attaches to both the
 298 interest of the trustee and the interest of such beneficiary. A
 299 ~~beneficiary's duties and liabilities may be expanded or~~
 300 ~~restricted in a trust agreement or beneficiary agreement.~~

301 (e) Any subsequent document appearing of record in which a
 302 beneficiary of a land trust transfers or encumbers any the
 303 beneficial interest in the land trust does not transfer or
 304 encumber the legal or equitable title of the trustee to the
 305 trust property and does not diminish or impair the authority of
 306 the trustee under the terms of the recorded instrument. Parties
 307 dealing with the trustee of a land trust are not required to
 308 inquire into the terms of the unrecorded trust agreement.

309 (f) ~~The An unrecorded~~ trust agreement ~~giving rise to a~~
 310 ~~recorded instrument~~ for a land trust may provide that one or
 311 more persons ~~or entities~~ have the power to direct the trustee to
 312 convey property or interests, execute a mortgage, distribute
 313 proceeds of a sale or financing, and execute documents
 314 incidental to administration of the land trust. The power of
 315 direction, unless provided otherwise in the ~~land~~ trust agreement
 316 of the land trust, is conferred upon the holders of the power
 317 for the use and benefit of all holders of any beneficial
 318 interest in the land trust. In the absence of a provision in the
 319 ~~land~~ trust agreement of a land trust to the contrary, the power
 320 of direction shall be in accordance with the percentage of
 321 individual ownership. In exercising the power of direction, the
 322 holders of the power of direction are presumed to act in a
 323 fiduciary capacity for the benefit of all holders of any
 324 beneficial interest in the land trust, unless otherwise provided
 325 in the ~~land~~ trust agreement. A beneficial interest in a land
 326 trust is indefeasible, and the power of direction may not be
 327 exercised so as to alter, amend, revoke, terminate, defeat, or
 328 otherwise affect or change the enjoyment of any beneficial
 329 interest in a land trust.

330 (g) A land trust ~~relating to real estate~~ does not fail,
 331 and any use relating to the trust property ~~real estate~~ may not
 332 be defeated, because beneficiaries are not specified by name in
 333 the recorded instrument ~~deed of conveyance~~ to the trustee or
 334 because duties are not imposed upon the trustee. The power
 335 conferred by any recorded instrument ~~deed of conveyance~~ on a
 336 trustee of a land trust to sell, lease, encumber, or otherwise

337 | dispose of property described in the recorded instrument ~~deed~~ is
 338 | effective, and a person dealing with the trustee of a land trust
 339 | is not required to inquire any further into the right of the
 340 | trustee to act or the disposition of any proceeds.

341 | (h) The principal residence of a beneficiary shall be
 342 | entitled to the homestead tax exemption even if the homestead is
 343 | held by a trustee in a land trust, provided the beneficiary
 344 | qualifies for the homestead exemption under chapter 196.

345 | (i) In a foreclosure against trust property or other
 346 | litigation affecting the title to trust property of a land
 347 | trust, the appointment of a guardian ad litem is not necessary
 348 | to represent the interest of any beneficiary.

349 | (9) SUCCESSOR TRUSTEE.—

350 | ~~(a) The provisions of s. 736.0705 relating to the~~
 351 | ~~resignation of a trustee do not apply to the appointment of a~~
 352 | ~~successor trustee under this section.~~

353 | ~~(a)(b)~~ If the recorded instrument and the unrecorded ~~land~~
 354 | trust agreement are silent as to the appointment of a successor
 355 | trustee of a land trust in the event of the death, incapacity,
 356 | resignation, or termination due to dissolution of a ~~land~~ trustee
 357 | or if a ~~land~~ trustee is unable to serve as trustee of a land
 358 | trust, one or more persons ~~or entities~~ having the power of
 359 | direction ~~of the land trust agreement~~ may appoint a successor
 360 | trustee or trustees of the land trust by filing a declaration of
 361 | appointment of a successor trustee or trustees in the public
 362 | records of office of the recorder of deeds in the county in
 363 | which the trust property is located. The declaration must be
 364 | signed by a beneficiary or beneficiaries of the land trust and

365 by the ~~each~~ successor trustee or trustees, must be acknowledged
 366 in the manner provided for acknowledgment of deeds, and must
 367 contain:

- 368 1. The legal description of the trust property.
- 369 2. The name and address of the former trustee.
- 370 3. The name and address of the ~~each~~ successor trustee or
 371 trustees.
- 372 4. A statement that ~~each successor trustee has been~~
 373 ~~appointed by one or more persons or entities~~ having the power of
 374 direction of the land trust appointed the successor trustee or
 375 trustees, together with an acceptance of appointment by the ~~each~~
 376 successor trustee or trustees.

377 (b)-(e) If the recorded instrument is silent as to the
 378 appointment of a successor trustee or trustees of a land trust
 379 but an unrecorded ~~land~~ trust agreement provides for the
 380 appointment of a successor trustee or trustees in the event of
 381 the death, incapacity, resignation, or termination due to
 382 dissolution of the ~~land~~ trustee, of a land trust, upon the
 383 appointment of any successor trustee pursuant to the terms of
 384 the unrecorded ~~land~~ trust agreement, the ~~each~~ successor trustee
 385 or trustees shall file a declaration of appointment of a
 386 successor trustee in the public records of ~~office of the~~
 387 ~~recorder of deeds in~~ the county in which the trust property is
 388 located. The declaration must be signed by both the former
 389 trustee and the ~~each~~ successor trustee or trustees, must be
 390 acknowledged in the manner provided for acknowledgment of deeds,
 391 and must contain:

- 392 1. The legal description of the trust property.

- 393 2. The name and address of the former trustee.
 394 3. The name and address of the successor trustee or
 395 trustees.
 396 4. A statement of resignation by the former trustee and a
 397 statement of acceptance of appointment by the ~~each~~ successor
 398 trustee or trustees.
 399 5. A statement that the ~~each~~ successor trustee or trustees
 400 were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~
 401 trust agreement.

402
 403 If the appointment of any successor trustee of a land trust is
 404 due to the death or incapacity of the former trustee, the
 405 declaration need not be signed by the former trustee and a copy
 406 of the death certificate or a statement that the former trustee
 407 is incapacitated or unable to serve must be attached to or
 408 included in the declaration, as applicable.

409 ~~(c)-(d)~~ If the recorded instrument provides for the
 410 appointment of any successor trustee of a land trust and any
 411 successor trustee is appointed in accordance with the recorded
 412 instrument, no additional declarations of appointment of any
 413 successor trustee are required under this section.

414 ~~(d)-(e)~~ Each successor ~~land~~ trustee appointed with respect
 415 to a land trust is fully vested with all the estate, properties,
 416 rights, powers, trusts, duties, and obligations of the
 417 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee
 418 of a land trust is not under any duty to inquire into the acts
 419 or omissions of a predecessor trustee and is not liable for any
 420 act or failure to act of a predecessor trustee. A person dealing

421 with any successor trustee of a land trust pursuant to a
 422 declaration filed under this section is not obligated to inquire
 423 into or ascertain the authority of the successor trustee to act
 424 within or exercise the powers granted under the recorded
 425 instruments or any unrecorded trust agreement ~~declarations or~~
 426 ~~agreements~~.

427 ~~(e)(f)~~ A ~~land~~ trust agreement may provide that the trustee
 428 of a land trust, when directed to do so by the holder of the
 429 power of direction or by the beneficiaries of the land trust or
 430 legal representatives of the beneficiaries, may convey the trust
 431 property directly to another trustee on behalf of the
 432 beneficiaries or to another representative named in such
 433 directive ~~others named by the beneficiaries~~.

434 (10) TRUSTEE AS CREDITOR.—

435 (a) If a debt is secured by a security interest or
 436 mortgage against ~~in~~ a beneficial interest in a land trust or by
 437 a mortgage on ~~land~~ trust property of a land trust, the validity
 438 or enforceability of the debt, security interest, or mortgage
 439 and the rights, remedies, powers, and duties of the creditor
 440 with respect to the debt or the security are not affected by the
 441 fact that the creditor and the trustee are the same person ~~or~~
 442 ~~entity~~, and the creditor may extend credit, obtain any necessary
 443 security interest or mortgage, and acquire and deal with the
 444 property comprising the security as though the creditor were not
 445 the trustee.

446 (b) A trustee of a land trust does not breach a fiduciary
 447 duty to the beneficiaries, and it is not evidence of a breach of
 448 any fiduciary duty owed by the trustee to the beneficiaries for

449 a trustee to be or become a secured or unsecured creditor of the
 450 land trust, the beneficiary of the land trust, or a third party
 451 whose debt to such creditor is guaranteed by a beneficiary of
 452 the land trust.

453 (11) NOTICES TO TRUSTEE.—Any notice required to be given
 454 to a trustee of a land trust regarding trust property by a
 455 person who is not a party to the trust agreement must identify
 456 the trust property to which the notice pertains or include the
 457 name and date of the land trust to which the notice pertains, if
 458 such information is shown on the recorded instrument for such
 459 trust property.

460 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise
 461 provided in this section, chapter 736 does not apply to a land
 462 trust governed by this section.

463 (a) A trust is not a land trust governed by this section
 464 if there is no recorded instrument that confers on the trustee
 465 the power and authority prescribed in s 689.073(1).

466 (b) For a trust created before July 1, 2013:

467 1. The trust is a land trust governed by this section if a
 468 recorded instrument confers on the trustee the power and
 469 authority described in s 689.073(1) and if:

470 a. The recorded instrument or the trust agreement
 471 expressly provides that the trust is a land trust; or

472 b. The intent of the parties that the trust be a land
 473 trust is discerned from the trust agreement or the recorded
 474 instrument;

475
 476 without regard to whether the trustee's duties under the trust

477 | agreement are greater than those limited duties described in s.
 478 | 689.071(2)(c).

479 | 2. The trust is not a land trust governed by this section
 480 | if:

481 | a. The recorded instrument or the trust agreement
 482 | expressly provides that the trust is to be governed by chapter
 483 | 736, or by any predecessor trust code or other law; or

484 | b. The intent of the parties that the trust be governed by
 485 | chapter 736, or by any predecessor trust code or other law, is
 486 | discerned from the trust agreement or the recorded instrument;

487 |
 488 | without regard to whether the trustee's duties under the trust
 489 | agreement exceed those limited duties listed in s.
 490 | 689.071(2)(c), and without consideration of any references in
 491 | the trust agreement to provisions of chapter 736 made applicable
 492 | to the trust by chapter 721, if the trust is a timeshare estate
 493 | trust complying with s. 721.08(2)(c)4. or a vacation club trust
 494 | complying with s. 721.53(1)(e).

495 | 3. Solely for the purpose of determining the law governing
 496 | a trust under subparagraph 1. or subparagraph 2., the
 497 | determination shall be made without consideration of any
 498 | amendment to the trust agreement made on or after the effective
 499 | date of this act, except as provided in paragraph (d).

500 | 4. If the determination of whether a trust is a land trust
 501 | governed by this section cannot be made under either
 502 | subparagraph 1. or subparagraph 2., the determination shall be
 503 | made under paragraph (c) as if the trust was created on or after
 504 | the effective date of this act.

505 (c) If a recorded instrument confers on the trustee the
 506 power and authority described in s. 689.073(1) and the trust was
 507 created on or after the effective date of this act, the trust
 508 shall be determined to be a land trust governed by this section
 509 only if the trustee's duties under the trust agreement,
 510 including any amendment made on or after such date, are no
 511 greater than those limited duties described in s. 689.071(2)(c).

512 (d) If the trust agreement for a land trust created before
 513 the effective date of this act is amended on or after such date
 514 to add to or increase the duties of the trustee beyond the
 515 duties provided in the trust agreement as of the effective date
 516 of this act, the trust shall remain a land trust governed by
 517 this section only if the additional or increased duties of the
 518 trustee implemented by the amendment are no greater than those
 519 limited duties described in s. 689.071(2)(c).

520 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section
 521 does not render ineffective any effective Uniform Commercial
 522 Code financing statement filed before the effective date of this
 523 act to perfect a security interest in a beneficial interest in a
 524 land trust that is determined to be real property as provided in
 525 subsection (6), but such a financing statement ceases to be
 526 effective at the earlier of 5 years after the effective date of
 527 this act or the time the financing statement would have ceased
 528 to be effective under the law of the jurisdiction in which it is
 529 filed, and the filing of a Uniform Commercial Code continuation
 530 statement after the effective date of this act does not continue
 531 the effectiveness of such a financing statement. The recording
 532 of a mortgage, deed of trust, security agreement, or other

533 similar security document against such a beneficial interest
 534 that is real property in the public records specified in
 535 subsection (8)(c) continues the effectiveness and priority of a
 536 financing statement filed against such a beneficial interest
 537 before the effective date of this act if:

538 (a) The recording of the security document in that county
 539 is effective to perfect a lien on such beneficial interest under
 540 subsection (8)(c);

541 (b) The recorded security document identifies a financing
 542 statement filed before the effective date of this act by
 543 indicating the office in which the financing statement was filed
 544 and providing the dates of filing and the file numbers, if any,
 545 of the financing statement and of the most recent continuation
 546 statement filed with respect to the financing statement; and

547 (c) The recorded security document indicates that such
 548 financing statement filed before the effective date of this act
 549 remains effective.

550
 551 If no original security document bearing the debtor's signature
 552 is readily available for recording in the public records, a
 553 secured party may proceed under this subsection with such
 554 financing statement filed before the effective date of this act
 555 by recording a copy of a security document verified by the
 556 secured party as being a true and correct copy of an original
 557 authenticated by the debtor. This subsection does not apply to
 558 the perfection of a security interest in any beneficial interest
 559 in a land trust that is determined to be personal property under
 560 subsection (6).

561 (14)~~(11)~~ REMEDIAL ACT.—This act is remedial in nature and
 562 shall be given a liberal interpretation to effectuate the intent
 563 and purposes hereinabove expressed.

564 (15)~~(12)~~ EXCLUSION.—This act does not apply to any deed,
 565 mortgage, or other instrument to which s. 689.07 applies.

566
 567 Section 3. Section 736.0102, Florida Statutes, is amended
 568 to read:

569 736.0102 Scope.—

570 (1) Except as otherwise provided in this section, this
 571 code applies to express trusts, charitable or noncharitable, and
 572 trusts created pursuant to a law, judgment, or decree that
 573 requires the trust to be administered in the manner of an
 574 express trust.

575 (2) This code does not apply to constructive or resulting
 576 trusts; conservatorships; custodial arrangements pursuant to the
 577 Florida Uniform Transfers to Minors Act; business trusts
 578 providing for certificates to be issued to beneficiaries; common
 579 trust funds; ~~land trusts under s. 689.071, except to the extent~~
 580 ~~provided in s. 689.071(7);~~ trusts created by the form of the
 581 account or by the deposit agreement at a financial institution;
 582 voting trusts; security arrangements; liquidation trusts; trusts
 583 for the primary purpose of paying debts, dividends, interest,
 584 salaries, wages, profits, pensions, or employee benefits of any
 585 kind; and any arrangement under which a person is nominee or
 586 escrowee for another.

587 (3) This code does not apply to any land trust under s.
 588 689.071, except to the extent provided in s. 689.071(7), s.

589 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its
 590 creation by chapter 736, former chapter 737, or any prior trust
 591 statute superseded or replaced by any provision of former
 592 chapter 737, is not a land trust regardless of any amendment or
 593 modification of the trust, any change in the assets held in the
 594 trust, or any continuing trust resulting from the distribution
 595 or retention in further trust of assets from the trust.

596 Section 4. The Division of Law Revision and Information is
 597 directed to replace the phrases "the effective date of this act"
 598 and "5 years after the effective date of this act" wherever they
 599 occur in this act with such dates.

600 Section 5. This act shall take effect upon becoming a law.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Rodríguez, J. offered the following:

Amendment (with title amendment)

Remove lines 186-599 and insert:

property to the trustee of a land trust and conferring upon the trustee the power and authority prescribed in s. 689.073(1), ~~in this state, including, but not limited to, a leasehold or mortgagee interest, to any person or any corporation, bank, trust company, or other entity duly formed under the laws of its state of qualification, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated "trustee" or "as trustee,"~~ whether or not reference is made in the recorded instrument to the beneficiaries of such land trust or to the trust agreement or any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee both legal and equitable title, and full rights of ownership, over the trust ~~real~~ property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in



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21 and with the trust property or interest therein or any part
22 thereof. The recorded instrument does not itself create an
23 entity, regardless of whether the relationship among the
24 beneficiaries and the trustee is deemed to be an entity under
25 other applicable law; provided, the recorded instrument confers
26 on the trustee the power and authority to protect, to conserve,
27 to sell, to lease, to encumber, or otherwise to manage and
28 dispose of the real property described in the recorded
29 instrument.

30 (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the
31 statute of uses do not execute a land trust or vest the trust
32 property in the beneficiary or beneficiaries of the land trust,
33 notwithstanding any lack of duties on the part of the trustee or
34 the otherwise passive nature of the land trust.

35 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of
36 merger does not extinguish a land trust or vest the trust
37 property in the beneficiary or beneficiaries of the land trust,
38 regardless of whether the trustee is the sole beneficiary of the
39 land trust.

40 (6) PERSONAL PROPERTY.—In all cases in which the recorded
41 instrument or the trust agreement, as hereinabove provided,
42 contains a provision defining and declaring the interests of
43 beneficiaries of a land trust thereunder to be personal property
44 only, such provision is shall be controlling for all purposes
45 when such determination becomes an issue under the laws or in
46 the courts of this state. If no such personal property
47 designation appears in the recorded instrument or in the trust



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48 agreement, the interests of the land trust beneficiaries are
49 real property.

50 (7) TRUSTEE LIABILITY.—In addition to any other limitation
51 on personal liability existing pursuant to statute or otherwise,
52 the provisions of ss. 736.08125 and 736.1013 apply to the
53 trustee of a land trust created pursuant to this section.

54 (8) LAND TRUST BENEFICIARIES.—

55 (a) Except as provided in this section, the beneficiaries
56 of a land trust are not liable, solely by being beneficiaries,
57 under a judgment, decree, or order of court or in any other
58 manner for a debt, obligation, or liability of the land trust.

59 ~~(b)~~ Any beneficiary acting under the trust agreement of a
60 land trust is not liable to the land trust's trustee or to any
61 other beneficiary for the beneficiary's good faith reliance on
62 the provisions of the trust agreement. A beneficiary's duties
63 and liabilities under a land trust may be expanded or restricted
64 in a trust agreement or beneficiary agreement.

65 (b)1. If provided in the recorded instrument, in the trust
66 agreement, or in a beneficiary agreement:

67 a. A particular beneficiary may own the beneficial
68 interest in a particular portion or parcel of the trust property
69 of a land trust;

70 b. A particular person may be the holder of the power of
71 direction with respect to the trustee's actions concerning a
72 particular portion or parcel of the trust property of a land
73 trust; and

74 c. The beneficiaries may own specified proportions or
75 percentages of the beneficial interest in the trust property or



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76 in particular portions or parcels of the trust property of a
77 land trust.

78 2. Multiple beneficiaries may own a beneficial interest in
79 a land trust as tenants in common, joint tenants with right of
80 survivorship, or tenants by the entireties.

81 (c) If a beneficial interest in a land trust is determined
82 to be personal property as provided in subsection (6), chapter
83 679 applies to the perfection of any security interest in that a
84 beneficial interest in a land trust. If a beneficial interest in
85 a land trust is determined to be real property as provided in
86 subsection (6), then to perfect a lien or security interest
87 against that beneficial interest, the mortgage, deed of trust,
88 security agreement, or other similar security document must be
89 recorded in the public records of the county that is specified
90 for such security documents in the recorded instrument or in a
91 declaration of trust or memorandum of such declaration of trust
92 recorded in the public records of the same county as the
93 recorded instrument. If no county is so specified for recording
94 such security documents, the proper county for recording such a
95 security document against a beneficiary's interest in any trust
96 property is the county where the trust property is located. The
97 perfection of a lien or security interest in a beneficial
98 interest in a land trust does not affect, attach to, or encumber
99 the legal or equitable title of the trustee in the trust
100 property and does not impair or diminish the authority of the
101 trustee under the recorded instrument, and parties dealing with
102 the trustee are not required to inquire into the terms of the



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103 unrecorded trust agreement or any lien or security interest
104 against a beneficial interest in the land trust.

105 (d) The trustee's legal and equitable title to the trust
106 property of a land trust is separate and distinct from the
107 beneficial interest of a beneficiary in the land trust and in
108 the trust property. A lien, judgment, mortgage, security
109 interest, or other encumbrance attaching to the trustee's legal
110 and equitable title to the trust property of a land trust does
111 not attach to the beneficial interest of any beneficiary; and
112 any lien, judgment, mortgage, security interest, or other
113 encumbrance against a beneficiary or beneficial interest does
114 not attach to the legal or equitable title of the trustee to the
115 trust property held under a land trust, unless the lien,
116 judgment, mortgage, security interest, or other encumbrance by
117 its terms or by operation of other law attaches to both the
118 interest of the trustee and the interest of such beneficiary. A
119 ~~beneficiary's duties and liabilities may be expanded or~~
120 ~~restricted in a trust agreement or beneficiary agreement.~~

121 (e) Any subsequent document appearing of record in which a
122 beneficiary of a land trust transfers or encumbers any the
123 beneficial interest in the land trust does not transfer or
124 encumber the legal or equitable title of the trustee to the
125 trust property and does not diminish or impair the authority of
126 the trustee under the terms of the recorded instrument. Parties
127 dealing with the trustee of a land trust are not required to
128 inquire into the terms of the unrecorded trust agreement.

129 (f) ~~The An unrecorded trust agreement giving rise to a~~
130 ~~recorded instrument~~ for a land trust may provide that one or



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131 more persons ~~or entities~~ have the power to direct the trustee to
132 convey property or interests, execute a mortgage, distribute
133 proceeds of a sale or financing, and execute documents
134 incidental to administration of the land trust. The power of
135 direction, unless provided otherwise in the ~~land~~ trust agreement
136 of the land trust, is conferred upon the holders of the power
137 for the use and benefit of all holders of any beneficial
138 interest in the land trust. In the absence of a provision in the
139 ~~land~~ trust agreement of a land trust to the contrary, the power
140 of direction shall be in accordance with the percentage of
141 individual ownership. In exercising the power of direction, the
142 holders of the power of direction are presumed to act in a
143 fiduciary capacity for the benefit of all holders of any
144 beneficial interest in the land trust, unless otherwise provided
145 in the ~~land~~ trust agreement. A beneficial interest in a land
146 trust is indefeasible, and the power of direction may not be
147 exercised so as to alter, amend, revoke, terminate, defeat, or
148 otherwise affect or change the enjoyment of any beneficial
149 interest in a land trust.

150 (g) A land trust ~~relating to real estate~~ does not fail,
151 and any use relating to the trust property ~~real estate~~ may not
152 be defeated, because beneficiaries are not specified by name in
153 the recorded instrument ~~deed of conveyance~~ to the trustee or
154 because duties are not imposed upon the trustee. The power
155 conferred by any recorded instrument ~~deed of conveyance~~ on a
156 trustee of a land trust to sell, lease, encumber, or otherwise
157 dispose of property described in the recorded instrument ~~deed~~ is
158 effective, and a person dealing with the trustee of a land trust



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159 is not required to inquire any further into the right of the
160 trustee to act or the disposition of any proceeds.

161 (h) The principal residence of a beneficiary shall be
162 entitled to the homestead tax exemption even if the homestead is
163 held by a trustee in a land trust, provided the beneficiary
164 qualifies for the homestead exemption under chapter 196.

165 (i) In a foreclosure against trust property or other
166 litigation affecting the title to trust property of a land
167 trust, the appointment of a guardian ad litem is not necessary
168 to represent the interest of any beneficiary.

169 (9) SUCCESSOR TRUSTEE.—

170 ~~(a) The provisions of s. 736.0705 relating to the~~
171 ~~resignation of a trustee do not apply to the appointment of a~~
172 ~~successor trustee under this section.~~

173 ~~(a)(b)~~ If the recorded instrument and the unrecorded ~~land~~
174 trust agreement are silent as to the appointment of a successor
175 trustee of a land trust in the event of the death, incapacity,
176 resignation, or termination due to dissolution of a ~~land~~ trustee
177 or if a ~~land~~ trustee is unable to serve as trustee of a land
178 trust, one or more persons ~~or entities~~ having the power of
179 ~~direction of the land trust agreement~~ may appoint a successor
180 trustee or trustees of the land trust by filing a declaration of
181 appointment of a successor trustee or trustees in the public
182 records of office of the recorder of deeds in the county in
183 which the trust property is located. The declaration must be
184 signed by a beneficiary or beneficiaries of the land trust and
185 by the each successor trustee or trustees, must be acknowledged



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186 in the manner provided for acknowledgment of deeds, and must
187 contain:

188 1. The legal description of the trust property.

189 2. The name and address of the former trustee.

190 3. The name and address of the each successor trustee or
191 trustees.

192 4. A statement that ~~each successor trustee has been~~
193 ~~appointed by~~ one or more persons ~~or entities~~ having the power of
194 direction of the land trust appointed the successor trustee or
195 trustees, together with an acceptance of appointment by the each
196 successor trustee or trustees.

197 (b)-(e) If the recorded instrument is silent as to the
198 appointment of a successor trustee or trustees of a land trust
199 but an unrecorded ~~land~~ trust agreement provides for the
200 appointment of a successor trustee or trustees in the event of
201 the death, incapacity, resignation, or termination due to
202 dissolution of the ~~land~~ trustee, of a land trust, then upon the
203 appointment of any successor trustee pursuant to the terms of
204 the unrecorded ~~land~~ trust agreement, the each successor trustee
205 or trustees shall file a declaration of appointment of a
206 successor trustee in the public records of ~~office of the~~
207 ~~recorder of deeds in~~ the county in which the trust property is
208 located. The declaration must be signed by both the former
209 trustee and the each successor trustee or trustees, must be
210 acknowledged in the manner provided for acknowledgment of deeds,
211 and must contain:

212 1. The legal description of the trust property.

213 2. The name and address of the former trustee.



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214 3. The name and address of the successor trustee or
215 trustees.

216 4. A statement of resignation by the former trustee and a
217 statement of acceptance of appointment by the each successor
218 trustee or trustees.

219 5. A statement that the each successor trustee or trustees
220 were was duly appointed under the terms of the unrecorded land
221 trust agreement.

222

223 If the appointment of any successor trustee of a land trust is
224 due to the death or incapacity of the former trustee, the
225 declaration need not be signed by the former trustee and a copy
226 of the death certificate or a statement that the former trustee
227 is incapacitated or unable to serve must be attached to or
228 included in the declaration, as applicable.

229 ~~(c)-(d)~~ If the recorded instrument provides for the
230 appointment of any successor trustee of a land trust and any
231 successor trustee is appointed in accordance with the recorded
232 instrument, no additional declarations of appointment of any
233 successor trustee are required under this section.

234 ~~(d)-(e)~~ Each successor ~~land~~ trustee appointed with respect
235 to a land trust is fully vested with all the estate, properties,
236 rights, powers, trusts, duties, and obligations of the
237 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee
238 of a land trust is not under any duty to inquire into the acts
239 or omissions of a predecessor trustee and is not liable for any
240 act or failure to act of a predecessor trustee. A person dealing
241 with any successor trustee of a land trust pursuant to a



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242 declaration filed under this section is not obligated to inquire
243 into or ascertain the authority of the successor trustee to act
244 within or exercise the powers granted under the recorded
245 instruments or any unrecorded trust agreement ~~declarations or~~
246 ~~agreements~~.

247 ~~(e)-(f)~~ A ~~land~~ trust agreement may provide that the trustee
248 of a land trust, when directed to do so by the holder of the
249 power of direction or by the beneficiaries of the land trust or
250 legal representatives of the beneficiaries, may convey the trust
251 property directly to another trustee on behalf of the
252 beneficiaries or to another representative named in such
253 directive ~~others named by the beneficiaries~~.

254 (10) TRUSTEE AS CREDITOR.—

255 (a) If a debt is secured by a security interest or
256 mortgage against ~~in~~ a beneficial interest in a land trust or by
257 a mortgage on ~~land~~ trust property of a land trust, the validity
258 or enforceability of the debt, security interest, or mortgage
259 and the rights, remedies, powers, and duties of the creditor
260 with respect to the debt or the security are not affected by the
261 fact that the creditor and the trustee are the same person ~~or~~
262 ~~entity~~, and the creditor may extend credit, obtain any necessary
263 security interest or mortgage, and acquire and deal with the
264 property comprising the security as though the creditor were not
265 the trustee.

266 (b) A trustee of a land trust does not breach a fiduciary
267 duty to the beneficiaries, and it is not evidence of a breach of
268 any fiduciary duty owed by the trustee to the beneficiaries for
269 a trustee to be or become a secured or unsecured creditor of the



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270 land trust, the beneficiary of the land trust, or a third party
271 whose debt to such creditor is guaranteed by a beneficiary of
272 the land trust.

273 (11) NOTICES TO TRUSTEE.—Any notice required to be given
274 to a trustee of a land trust regarding trust property by a
275 person who is not a party to the trust agreement must identify
276 the trust property to which the notice pertains or include the
277 name and date of the land trust to which the notice pertains, if
278 such information is shown on the recorded instrument for such
279 trust property.

280 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise
281 provided in this section, chapter 736 does not apply to a land
282 trust governed by this section.

283 (a) A trust is not a land trust governed by this section
284 if there is no recorded instrument that confers on the trustee
285 the power and authority prescribed in s 689.073(1).

286 (b) For a trust created before the effective date of this
287 act:

288 1. The trust is a land trust governed by this section if a
289 recorded instrument confers on the trustee the power and
290 authority described in s 689.073(1) and if:

291 a. The recorded instrument or the trust agreement
292 expressly provides that the trust is a land trust; or

293 b. The intent of the parties that the trust be a land
294 trust is discerned from the trust agreement or the recorded
295 instrument;

296



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297 without regard to whether the trustee's duties under the trust
298 agreement are greater than those limited duties described in s.
299 689.071(2)(c).

300 2. The trust is not a land trust governed by this section
301 if:

302 a. The recorded instrument or the trust agreement
303 expressly provides that the trust is to be governed by chapter
304 736, or by any predecessor trust code or other trust law other
305 than this section; or

306 b. The intent of the parties that the trust be governed by
307 chapter 736, or by any predecessor trust code or other trust law
308 other than this section, is discerned from the trust agreement
309 or the recorded instrument;

310
311 without regard to whether the trustee's duties under the trust
312 agreement are greater than those limited duties listed in s.
313 689.071(2)(c), and without consideration of any references in
314 the trust agreement to provisions of chapter 736 made applicable
315 to the trust by chapter 721, if the trust is a timeshare estate
316 trust complying with s. 721.08(2)(c)4. or a vacation club trust
317 complying with s. 721.53(1)(e).

318 3. Solely for the purpose of determining the law governing
319 a trust under subparagraph 1. or subparagraph 2., the
320 determination shall be made without consideration of any
321 amendment to the trust agreement made on or after the effective
322 date of this act, except as provided in paragraph (d).

323 4. If the determination of whether a trust is a land trust
324 governed by this section cannot be made under either



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325 subparagraph 1. or subparagraph 2., the determination shall be
326 made under paragraph (c) as if the trust was created on or after
327 the effective date of this act.

328 (c) If a recorded instrument confers on the trustee the
329 power and authority described in s. 689.073(1) and the trust was
330 created on or after the effective date of this act, the trust
331 shall be determined to be a land trust governed by this section
332 only if the trustee's duties under the trust agreement,
333 including any amendment made on or after such date, are greater
334 than those limited duties described in s. 689.071(2)(c).

335 (d) If the trust agreement for a land trust created before
336 the effective date of this act is amended on or after such date
337 to add to or increase the duties of the trustee beyond the
338 duties provided in the trust agreement as of the effective date
339 of this act, the trust shall remain a land trust governed by
340 this section only if the additional or increased duties of the
341 trustee implemented by the amendment are greater than those
342 limited duties described in s. 689.071(2)(c).

343 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section
344 does not render ineffective any effective Uniform Commercial
345 Code financing statement filed before July 1, 2014, to perfect a
346 security interest in a beneficial interest in a land trust that
347 is determined to be real property as provided in subsection (6),
348 but such a financing statement ceases to be effective at the
349 earlier of July 1, 2019, or the time the financing statement
350 would have ceased to be effective under the law of the
351 jurisdiction in which it is filed, and the filing of a Uniform
352 Commercial Code continuation statement after July 1, 2014, does



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353 not continue the effectiveness of such a financing statement.
354 The recording of a mortgage, deed of trust, security agreement,
355 or other similar security document against such a beneficial
356 interest that is real property in the public records specified
357 in subsection (8)(c) continues the effectiveness and priority of
358 a financing statement filed against such a beneficial interest
359 before July 1, 2014, if:

360 (a) The recording of the security document in that county
361 is effective to perfect a lien on such beneficial interest under
362 subsection (8)(c);

363 (b) The recorded security document identifies a financing
364 statement filed before July 1, 2014, by indicating the office in
365 which the financing statement was filed and providing the dates
366 of filing and the file numbers, if any, of the financing
367 statement and of the most recent continuation statement filed
368 with respect to the financing statement; and

369 (c) The recorded security document indicates that such
370 financing statement filed before July 1, 2014, remains
371 effective.

372

373 If no original security document bearing the debtor's signature
374 is readily available for recording in the public records, a
375 secured party may proceed under this subsection with such
376 financing statement filed before July 1, 2014, by recording a
377 copy of a security document verified by the secured party as
378 being a true and correct copy of an original authenticated by
379 the debtor. This subsection does not apply to the perfection of



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380 a security interest in any beneficial interest in a land trust
381 that is determined to be personal property under subsection (6).

382 (14)(11) REMEDIAL ACT.—This act is remedial in nature and
383 shall be given a liberal interpretation to effectuate the intent
384 and purposes hereinabove expressed.

385 (15)(12) EXCLUSION.—This act does not apply to any deed,
386 mortgage, or other instrument to which s. 689.07 applies.

387 Section 3. Section 736.0102, Florida Statutes, is amended
388 to read:

389 736.0102 Scope.—

390 (1) Except as otherwise provided in this section, this
391 code applies to express trusts, charitable or noncharitable, and
392 trusts created pursuant to a law, judgment, or decree that
393 requires the trust to be administered in the manner of an
394 express trust.

395 (2) This code does not apply to constructive or resulting
396 trusts; conservatorships; custodial arrangements pursuant to the
397 Florida Uniform Transfers to Minors Act; business trusts
398 providing for certificates to be issued to beneficiaries; common
399 trust funds; ~~land trusts under s. 689.071, except to the extent~~
400 ~~provided in s. 689.071(7);~~ trusts created by the form of the
401 account or by the deposit agreement at a financial institution;
402 voting trusts; security arrangements; liquidation trusts; trusts
403 for the primary purpose of paying debts, dividends, interest,
404 salaries, wages, profits, pensions, or employee benefits of any
405 kind; and any arrangement under which a person is nominee or
406 escrowee for another.



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407 (3) This code does not apply to any land trust under s.
408 689.071, except to the extent provided in s. 689.071(7), s.
409 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its
410 creation by chapter 736, former chapter 737, or any prior trust
411 statute superseded or replaced by any provision of former
412 chapter 737, is not a land trust regardless of any amendment or
413 modification of the trust, any change in the assets held in the
414 trust, or any continuing trust resulting from the distribution
415 or retention in further trust of assets from the trust.

416 Section 4. The Division of Law Revision and Information is
417 directed to replace the phrase "the effective date of this act"
418 wherever it occurs in this act with such date.

419

420

421

422

423

T I T L E A M E N D M E N T

424

Remove lines 3-5 and insert:

425

F.S.; transferring and renumbering portions of s. 689.071, F.S.;

426

providing title estoppel language for vesting full title in

427

trustees; providing

428

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 231 Dissolution of Marriage
SPONSOR(S): Workman and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Ward <i>Ward</i>	Bond <i>MB</i>
2) Judiciary Committee			

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 spousal support unconnected to dissolution of marriage.
- Eliminates consideration of the standard of living established during the marriage as a factor in determining alimony.
- Eliminates the court's ability to impose a fine for non-payment of support obligations.
- Creates presumptions for earning ability imputed to an obligee.
- Limits the authority of a court to consider adultery when determining alimony.
- 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.
- Creates a rebuttable presumption that alimony terminates upon retirement of the obligor.
- Creates a rebuttable presumption 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 considering the income or assets of a new spouse of the obligor.
- 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.

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 own 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

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.

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 10 and 20 years.
- A "short-term marriage" means a marriage of less than 10 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 reflects existing law and thus makes no change. 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

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. 3rd 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]); *Adinolle v. Adinolle*, 718 So.2d 369, 370 (Fla. 4th DCA 1998) (nine year marriage "may very well be in the 'gray area'").

¹³ See Section 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. See also fn. 37, *infra*.

- 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.
- 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.

¹⁷ Section 61.08(8), F.S.

¹⁸ Section 60.08(5), F.S.

¹⁹ Section 60.08(6)(a), F.S.

²⁰ Section 61.08, F.S.

²¹ Section 61.08(8), F.S.

²² Section 61.08(8), F.S.

²³ Section 61.08(8), F.S.

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.

- Limits the duration of durational alimony to 50 percent of the length of the marriage, unless the recipient proves by clear and convincing evidence of need for a longer time period.

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 This bill provides that the three remaining 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 after a short-term marriage to the lesser of 50 percent of the difference between the net incomes, or 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 lesser of 50 percent of the difference between the net incomes of the parties, or an amount based on a sliding scale formula (ranging from 20% to 30%) that changes based on the number of years of the marriage.
- Provides a 10 percentage point increase in the formula in favor of a recipient who is disabled or over 65 years of age. Disability must be proved by a letter from the Social Security Administration of total disability; and age must be proved by an original birth certificate or Florida driver license.
- Repeals authority for an award of permanent alimony.
- Requires imputation of income (see below).

²⁸ Section 61.08, F.S.
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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 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 to the lesser of 50 percent of the difference between the net incomes of the parties, or an amount based on a sliding scale formula (ranging from 31% to 33%) that changes based on the number of years of the marriage.
- Provides a 10 percentage point increase in the formula in favor of a recipient who is disabled or over 65 years of age. Disability must be proved by a letter from the Social Security Administration of total disability, and age must be proved by an original birth certificate or Florida driver license.
- 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.
- Limits reference to non-marital assets used during the marriage unless such assets were relied upon by the parties.
- 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.

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

Adultery

Currently the court may consider the adultery of either party and the circumstances surrounding it in determining an award of alimony.³¹ Case law provides that adultery is not a bar to receipt of alimony³² and marital misconduct may not be used as a basis for alimony unless the misconduct causes a depletion of marital assets.³³

The bill limits the court's consideration of adultery by providing that it may be considered only if the adultery caused significant depletion of marital assets or reduction in marital income.

Relative Incomes

Currently, 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.³⁴ 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.³⁵ 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."³⁶ The trial court's imputation of income must be supported by competent, substantial evidence.³⁷

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(1), F.S.

³² See *Coltea v. Coltea*, 856 So.2d 1047 (Fla. 4th DCA).

³³ See *Noah v. Noah*, 491 So.2d 1124 (Fla. 1986) (holding that the trial court erred in distributing virtually all assets to the wife on the basis of her husband's adultery where there was no evidence that the adultery depleted the family resources or that the emotional devastation visited on the wife translated into her having a greater financial need).

³⁴ Section 61.08(9), F.S.

³⁵ Section 61.08(2)(c), F.S., provides that the court may look to the "earning capacities" of both parties.

³⁶ *Konsoulas v. Konsoulas*, 904 So.2d 440, 444 (Fla. 4th DCA 2005).

³⁷ *Zarycki-Weig v. Weig*, 25 So.3d 573 (Fla. 4th DCA 2009).

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.

Effect of Property Distribution and Child Support Awards on Alimony

Currently alimony is determined by settlement agreement, or statutory factors. Child support may be determined by agreement or by the court based upon findings of fact.³⁸ One factor in setting alimony is "any other factor necessary to do equity and justice between the parties."³⁹ Based on this factor, case law provides that alimony may be used to balance the inequities resulting from property disposition so long as there is a demonstrated ability to pay⁴⁰ and provides that the determination of alimony may also be based on obligations to dependents.⁴¹

The bill adds a new provision that the determination of equitable distribution or child support may affect an obligee's need for alimony or an obligor's ability to pay alimony. The court may offset or otherwise consider an alimony obligation in determining equitable distribution or child support under this chapter. This appears to codify current law.

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.⁴² "Failure to include findings of fact as required by section 61.08 is reversible error."⁴³ Further, "[t]he purpose of these findings is to 'assist the appellate court in providing a meaningful review.'"⁴⁴ Statutory law also requires the court to make findings of fact to support its award of alimony.⁴⁵ The bill adds to statutes the following requirements regarding written findings of fact:

³⁸ *Griffith v. Griffith*, 860 So.2d 1069 (Fla. 1st DCA 2003).

³⁹ Section 61.08(2)(j), F.S.

⁴⁰ *Hamlet v. Hamlet*, 583 So.2d 654 (Fla. 1991); *Rizer v. Rizer*, 691 So.2d 541 (Fla. 2nd DCA 1997).

⁴¹ *Canakaris v. Canakaris*, 382 So.2d 1197, 1202 (Fla. 1980).

⁴² Section 61.08(1), F.S.

⁴³ *Farley v. Farley*, 800 So.2d 710, 711 (Fla. 2d DCA 2001).

⁴⁴ *Esaw v. Esaw*, 965 So.2d 1261 (Fla. 2d DCA 2007), citing *Milo v. Milo*, 718 So.2d 343, 344 (Fla. 2d DCA 1998).

⁴⁵ Section 61.08(1), F.S.

- 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

Currently 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.

Contempt Proceedings

Currently failure to comply with a court order to pay alimony may subject an obligor to the penalties of civil contempt, including fines.⁴⁶ Further, "Fines resulting from civil contempt orders can only be reduced if the violator complies with the order that caused the fines."⁴⁷ The bill:

- Precludes a court in a contempt proceeding from awarding more than the monthly alimony obligation of the obligor, for the number of months owed.
- Codifies that the court may award attorney's fees to the prevailing party in a contempt proceeding.

Modification of an Alimony Award

Modification - In General

Currently 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.⁴⁸ 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.⁴⁹ 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

⁴⁶ *Murphy v. Evans*, 96 So. 3d 1034 (Fla. 3d DCA 2012).

⁴⁷ *Id.*, citing to *Politz v. Booth*, 910 So.2d 397 (Fla. 4th DCA 2005).

⁴⁸ Section 61.14(1), F.S.

⁴⁹ *Id.*

estoppel and res judicata.⁵⁰ "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."⁵¹ 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.

Modification of Alimony Based on the Existence of a Supportive Relationship

Currently 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.⁵² 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.
- Adds a new provision providing that a termination of alimony based upon a supporting relationship ends the court's jurisdiction to change the order again, which has the effect of making termination of alimony based on a supportive relationship a permanent end to alimony in that case.

Modification Based on Income of a New Spouse; Effect of Child Support Change

Currently if an obligor remarries or resides with another person who provides support, the income and assets of the new spouse or co-habitant may not be considered in a modification hearing.⁵³ The bill codifies this law to provide that if an obligor remarries or resides with another person, the income and assets of the obligor's spouse or person with whom the obligor resides may not be considered in a modification action regarding such obligor. The bill also adds that if child support and alimony were set at the same time, a 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.⁵⁴ 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.

⁵⁰ See, eg., *Perry v. Perry*, 976 So.2d 1151 (Fla. 4th DCA 2008).

⁵¹ *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).

⁵² Section 61.14(1)(b)1., F.S.

⁵³ *Schneider v. Schneider*, 348 So.2d 612 (Fla. 4th DCA 1977)

⁵⁴ *Pimm v. Pimm*, 601 So.2d 534 (Fla. 1992).

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.

Age or Retirement of the Obligor

Currently, 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.⁵⁵ 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.⁵⁶ 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

Currently alimony and child support may be sought without filing a dissolution proceeding.⁵⁷ Although the term is not used in Florida law, this effectively creates what many other states refer to as a legal separation. The bill eliminates the statutory authority for an award of alimony outside of an action for dissolution of marriage and separately prohibits alimony outside of a dissolution of marriage action. This bill does not affect the ability to petition for child support unconnected with dissolution.

The language making this change at lines 102-103 provides that "[a]limony may not be awarded in any other action." This provision appears to have the effect of prohibiting an award of alimony connected to an action for annulment of marriage.

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.⁵⁸ The court may also order that one party pay for

⁵⁵ Section 61.14(5)(b), F.S.

⁵⁶ *Pimm v. Pimm*, 601 So.2d 534 (Fla. 1992).

⁵⁷ Section 61.09, F.S.

⁵⁸ *Grace v. Grace*, 162 So.2d 314 (Fla. 1964).

the legal costs of the case, called "suit money."⁵⁹ Currently in every proceeding for dissolution, a party may claim alimony pendente lite and suit money.⁶⁰ The court may grant either or both, so long as the award is "reasonable."⁶¹ 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.⁶²

Bifurcation of Dissolution of Marriage Case

Currently 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.⁶³ 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.⁶⁴

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.⁶⁵ The burden of proof is on the petitioner to show changes that would require modification.⁶⁶ The bill:

- Provides that the amended statute applies to all initial awards of alimony made prior to July 1, 2013.
- Provides that the amended statute applies to all modifications of alimony made after July 1, 2013.

⁵⁹ Section 61.071, F.S.; Section 61.16, F.S.; *Scanlon v. Scanlon*, 154 So.2d 899 (Fla. 1963).

⁶⁰ Section 61.071, F.S.

⁶¹ *Id.*

⁶² See s. 61.08, F.S.

⁶³ Section 61.19, F.S.

⁶⁴ *Cloughton v. Cloughton*, 393 So.2d 1061, 1062 (Fla. 1981).

⁶⁵ Section 61.14, F.S.

⁶⁶ *Koski v. Koski*, 98 So.3d 93 (Fla. 4th DCA 2012).

- Provides that the amendments to the statute may serve as a basis to modify awards entered into before July 1, 2013.
- Provides that an obligor may petition to modify an existing obligation after either July 1, 2013, July 1, 2014, or July 1, 2015 depending upon the number of years of the marriage.⁶⁷

B. SECTION DIRECTORY:

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

Section 2 amends s. 61.08, F.S., relating to alimony.

Section 3 amends s. 61.09, F.S., deleting provisions providing for alimony unconnected with dissolution of a marriage.

Section 4 amends s. 61.14, F.S., regarding supportive relationships.

Section 5 amends s. 61.19, F.S., allowing separate adjudication of issues in a dissolution of marriage case in certain circumstances.

Section 6 provides the amendments made by this bill apply to all modifications after the effective date of the bill.

Section 7 provides an effective date of July 1, 2013.

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

⁶⁷ The requirements of the bill for modification of an existing award are less than 8 years, less than 15 years, and more than 15 years, respectively.

encourage settlement of cases that are currently litigated. There is no way 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:

One provision in the bill provides a means to adjust a statutory formula, but limits what evidence is admissible for purpose of the determination (see lines 302-312). Another provision limits the evidence to solely federal income tax returns (see lines 336-337). There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S. (the Evidence Code), and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. Although these matters are outside of the Evidence Code, they appear to create evidentiary rules. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the evidentiary changes in the bill.

One provision in the bill appears to limit a court in imposing a fine or sanction for contempt of court based on non-payment of alimony. (see lines 540-545). Art. II, s. 3, Fla. Const. provides, "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Case law provides that "[a]ny legislative enactment that purports to do away with the inherent power of contempt directly affects a separate and distinct function of the judicial branch, and, as such, violates the separation of powers doctrine contained in article II, section 3, of the Florida Constitution." *Walker v. Bentley*, 678 So.2d 1265, 1267 (Fla. 1996).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 3 contains the phrase "pendent lite". Based on the content, it perhaps should be changed to "pendente lite".

One provision of the bill has the effect of prohibiting alimony in an annulment action. Most think of annulment actions being filed very shortly after a marriage ceremony, in which case alimony would seem unlikely. However, an annulment action is also appropriate where bigamy is discovered, even if the parties have been together for quite some time. Current law allows for alimony in this situation,⁶⁸ the bill prohibits it.

One provision of the bill prohibits imputation of income derived from Social Security retirement benefits. (see lines 338-340). The concept of imputed income is that it is income assumed, that is, imputed income is income that someone should be but is not actually receiving. In the case of Social Security

⁶⁸ *Kindle v. Kindle*, 629 So.2d 176 (Fla. 5th DCA 1993) (20 year marriage annulled due to bigamy).

benefits, it is unclear how or why such benefits would be owed and not actually received, and thus it is unclear how such benefits can be the subject of an imputed income determination.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to dissolution of marriage; amending
 3 s. 61.071, F.S.; providing that alimony pendent lite
 4 shall be calculated in accordance with s. 61.08, F.S.;
 5 amending s. 61.08, F.S.; providing definitions;
 6 requiring a court to make certain written findings
 7 concerning alimony; providing for automatic
 8 termination of awards in certain circumstances;
 9 revising factors to be considered in whether to award
 10 alimony or maintenance; revising provisions relating
 11 to the protection of awards of alimony; revising
 12 provisions for an award of durational alimony;
 13 providing presumptions for or against awards based the
 14 duration of a marriage; providing for overcoming the
 15 presumptions; repealing provisions relating to
 16 permanent alimony; requiring written findings
 17 regarding the incomes and standard of living of the
 18 parties after dissolution of marriage; providing for
 19 an additional amount of alimony due to age or
 20 disability of a party seeking alimony in certain
 21 circumstances; providing for imputation of income to a
 22 party in certain circumstances; providing for the
 23 offset of or other consideration of an alimony
 24 obligation in determining equitable distribution or
 25 child support in certain circumstances; amending s.
 26 61.09, F.S.; deleting provisions providing for alimony
 27 unconnected with dissolution of a marriage; amending
 28 s. 61.14, F.S.; providing that an alimony order shall

29 be modified upon a showing of a substantial change in
 30 circumstances by clear and convincing evidence;
 31 providing that an increase in an obligor's income may
 32 not be considered permanent in nature until it has
 33 been maintained for a specified period without
 34 interruption; providing a presumption relating to the
 35 retroactive effect of a modification or termination of
 36 an alimony award; providing for award of attorney fees
 37 and costs if it is determined that an obligee
 38 unnecessarily or unreasonably litigated a petition for
 39 modification or termination of an alimony award;
 40 revising provisions relating to the effect of a
 41 supportive relationship on an award of alimony;
 42 prohibiting a court from reserving jurisdiction to
 43 reinstate an alimony award; providing that income and
 44 assets of the obligor's spouse or the person with whom
 45 the obligor resides may not be considered in the
 46 redetermination in a modification action; providing
 47 that if the court orders alimony concurrent with a
 48 child support order, the alimony award may not be
 49 modified due to the later modification or termination
 50 of child support payments; providing that the
 51 attaining of retirement age is a substantial change in
 52 circumstances; providing factors the court shall
 53 consider in determining whether the obligor's
 54 retirement is reasonable; requiring a court to impute
 55 income to the obligee based on the analysis and
 56 factors set forth in specified provisions; amending s.

57 61.19, F.S.; allowing separate adjudication of issues
 58 in a dissolution of marriage case in certain
 59 circumstances; providing applicability; providing an
 60 effective date.

61

62 Be It Enacted by the Legislature of the State of Florida:

63

64 Section 1. Section 61.071, Florida Statutes, is amended to
 65 read:

66 61.071 Alimony pendente lite; suit money.—In every
 67 proceeding for dissolution of the marriage, a party may claim
 68 alimony and suit money in the petition or by motion, and if the
 69 petition is well founded, the court shall allow alimony
 70 calculated in accordance with s. 61.08 and a reasonable sum of
 71 suit money therefor. If a party in any proceeding for
 72 dissolution of marriage claims alimony or suit money in his or
 73 her answer or by motion, and the answer or motion is well
 74 founded, the court shall allow alimony calculated in accordance
 75 with s. 61.08 and a reasonable sum of suit money therefor.

76 Section 2. Section 61.08, Florida Statutes, is amended to
 77 read:

78 61.08 Alimony.—

79 (1) As used this section, the term:

80 (a) "Alimony" means a payment of support by an obligor to
 81 an obligee as ordered by a court in accordance with this
 82 section, in the form of bridge-the-gap, rehabilitative, or
 83 durational alimony.

84 (b) "Long-term marriage" means a marriage having a

85 duration of 20 years or longer, as measured from the date of the
 86 marriage to the date of filing the petition for dissolution.

87 (c) "Mid-term marriage" means a marriage having a duration
 88 longer than 10 years but less than 20 years, as measured from
 89 the date of the marriage to the date of filing the petition for
 90 dissolution.

91 (d) "Net income" means net income as determined in
 92 accordance with s. 61.30.

93 (e) "Short-term marriage" means a marriage having a
 94 duration equal to or less than 10 years, as measured from the
 95 date of the marriage to the date of filing the petition for
 96 dissolution.

97 (2) (a) ~~(1)~~ In a proceeding for dissolution of marriage, the
 98 court may grant alimony to either party, which alimony may be
 99 bridge-the-gap, rehabilitative, or durational, or a permanent in
 100 nature ~~or any~~ combination of these forms of alimony where
 101 appropriate. In any award of alimony, the court may order
 102 periodic payments, ~~or~~ payments in lump sum, or both. Alimony may
 103 not be awarded in any other action.

104 (b) The court shall make written findings regarding the
 105 basis for awarding combinations of alimony, including the type
 106 of alimony and length of time for which it is awarded. The court
 107 may only award combinations of alimony to provide greater
 108 economic assistance to allow the recipient to achieve
 109 rehabilitation.

110 (c) The court may consider the adultery of either party
 111 ~~spouse~~ and the circumstances thereof in determining the amount
 112 of alimony, if any, to be awarded, only to the extent that the

113 adultery caused a significant depletion in the material assets
 114 or caused a significant reduction in the income of a party.

115 (d) In all dissolution actions, the court shall include
 116 written findings of fact relative to the factors enumerated in
 117 subsection (2) supporting an award or denial of alimony.

118 (e) An award of alimony granted under this section shall
 119 automatically terminate without further action from either party
 120 or the court upon the earlier of:

121 1. The expiration of the time period specified in the
 122 alimony order, or

123 2. The obligee's reaching retirement age for full social
 124 security retirement benefits. If the obligee proves by clear and
 125 convincing evidence that a need for alimony would continue to
 126 exist despite receipt of full social security benefits and that
 127 the obligor's ability to pay has not been diminished, the court
 128 shall award an extension of alimony consistent with this
 129 section.

130 (3)+(2) The party seeking alimony has the burden of proof
 131 of demonstrating a need for alimony in accordance with this
 132 section. In determining whether to award alimony ~~or maintenance~~,
 133 the court shall ~~first~~ make, in writing, a specific factual
 134 determination as to whether the other either party has ~~an actual~~
 135 ~~need for alimony or maintenance~~ and whether either party has the
 136 ability to pay alimony ~~or maintenance~~. If the court finds that
 137 ~~the a~~ party seeking alimony has met its burden of proof in
 138 demonstrating a need for alimony ~~or maintenance~~ and that the
 139 other party has the ability to pay alimony ~~or maintenance~~, then
 140 in determining the proper type and amount of alimony ~~or~~

141 ~~maintenance~~ under subsections (5)-~~(7)-(8)~~, the court shall
 142 consider all relevant factors, including, ~~but not limited to:~~
 143 ~~(a) The standard of living established during the~~
 144 ~~marriage.~~
 145 (a)~~(b)~~ The duration of the marriage.
 146 (b)~~(c)~~ The age and the physical and emotional condition of
 147 each party.
 148 (c)~~(d)~~ The financial resources of each party, including
 149 the portion of nonmarital assets that were relied upon by the
 150 parties during the marriage and the marital assets and
 151 liabilities distributed to each.
 152 (d)~~(e)~~ The earning capacities, educational levels,
 153 vocational skills, and employability of the parties and, when
 154 applicable, the time necessary for either party to acquire
 155 sufficient education or training to enable such party to find
 156 appropriate employment.
 157 (e)~~(f)~~ The contribution of each party to the marriage,
 158 including, but not limited to, services rendered in homemaking,
 159 child care, education, and career building of the other party.
 160 (f)~~(g)~~ The responsibilities each party will have with
 161 regard to any minor children the parties ~~they~~ have in common.
 162 (g)~~(h)~~ The tax treatment and consequences to both parties
 163 of an any alimony award, which must be consistent with
 164 applicable state and federal tax laws ~~including the designation~~
 165 ~~of all or a portion of the payment as a nontaxable,~~
 166 ~~nondeductible payment.~~
 167 (h)~~(i)~~ All sources of income available to either party,
 168 including income available to either party through investments

169 of any asset held by that party that were acquired during the
 170 marriage.

171 (i) The net income and standard of living available to
 172 each party after the application of the alimony award. There is
 173 a rebuttable presumption that both parties will necessarily have
 174 a lower standard of living after the dissolution of marriage
 175 than the standard of living they enjoyed during the marriage.
 176 This presumption may be overcome by a preponderance of the
 177 evidence.

178 (j) Any other factor necessary to do equity and justice
 179 between the parties, if that factor is specifically identified
 180 in the award with findings of fact justifying the application of
 181 the factor.

182 ~~(4)-(3)~~ To the extent necessary to protect an award of
 183 alimony, the court may order any party who is ordered to pay
 184 alimony to purchase or maintain a decreasing term life insurance
 185 policy or a bond, or to otherwise secure such alimony award with
 186 any other assets which may be suitable for that purpose in an
 187 amount adequate to secure the alimony award. Any such security
 188 may only be awarded upon a showing of special circumstances. If
 189 the court finds special circumstances and awards such security,
 190 the court must make specific evidentiary findings regarding the
 191 availability, cost, and financial impact on the obligated party.
 192 Any security may be modifiable in the event the underlying
 193 alimony award is modified and shall be reduced in an amount
 194 commensurate with any reduction in the alimony award.

195 ~~(4) For purposes of determining alimony, there is a~~
 196 ~~rebuttable presumption that a short-term marriage is a marriage~~

197 ~~having a duration of less than 7 years, a moderate term~~
 198 ~~marriage is a marriage having a duration of greater than 7 years~~
 199 ~~but less than 17 years, and long term marriage is a marriage~~
 200 ~~having a duration of 17 years or greater. The length of a~~
 201 ~~marriage is the period of time from the date of marriage until~~
 202 ~~the date of filing of an action for dissolution of marriage.~~

203 (5) Bridge-the-gap alimony may be awarded to assist a
 204 party by providing support to allow the party to make a
 205 transition from being married to being single. Bridge-the-gap
 206 alimony is designed to assist a party with legitimate
 207 identifiable short-term needs, and the length of an award may
 208 not exceed 2 years. An award of bridge-the-gap alimony
 209 terminates upon the death of either party or upon the remarriage
 210 of the party receiving alimony. An award of bridge-the-gap
 211 alimony shall not be modifiable in amount or duration.

212 (6) (a) Rehabilitative alimony may be awarded to assist a
 213 party in establishing the capacity for self-support through
 214 either:

- 215 1. The redevelopment of previous skills or credentials; or
- 216 2. The acquisition of education, training, or work
- 217 experience necessary to develop appropriate employment skills or
- 218 credentials.

219 (b) In order to award rehabilitative alimony, there must
 220 be a specific and defined rehabilitative plan which shall be
 221 included as a part of any order awarding rehabilitative alimony.

222 (c) An award of rehabilitative alimony may be modified or
 223 terminated in accordance with s. 61.14 based upon a substantial
 224 change in circumstances, upon noncompliance with the

225 rehabilitative plan, or upon completion of the rehabilitative
 226 plan.

227 (7) Durational alimony may be awarded ~~when permanent~~
 228 ~~periodic alimony is inappropriate. The purpose of durational~~
 229 ~~alimony is~~ to provide a party with economic assistance for a set
 230 period of time after following a short-term, mid-term, or long-
 231 term marriage of short or moderate duration or following a
 232 marriage of long duration if there is no ongoing need for
 233 support on a permanent basis. When awarding durational alimony,
 234 the court must make written findings that an award of any other
 235 form of alimony or a combination thereof is not appropriate. An
 236 award of durational alimony terminates upon the death of either
 237 party or upon the remarriage of the party receiving alimony. The
 238 amount of an award of durational alimony shall ~~may~~ be modified
 239 or terminated based upon a substantial change in circumstances
 240 or upon the existence of a supportive relationship in accordance
 241 with s. 61.14. However, The length of an award of durational
 242 alimony may not ~~be modified except under exceptional~~
 243 ~~circumstances and may not exceed~~ 50 percent of the length of the
 244 marriage, unless the party seeking alimony proves by clear and
 245 convincing evidence the need for an award of alimony for a
 246 greater period the length of the marriage.

247 (8)(a) There is a presumption against awarding alimony for
 248 a short-term marriage. A party seeking alimony for such a
 249 marriage may overcome this presumption by demonstrating by clear
 250 and convincing evidence a need for alimony. If the court finds
 251 that the party has met its burden in demonstrating a need for
 252 alimony, the court shall determine a monthly alimony obligation

253 that may not exceed the lesser of 50 percent of the difference
 254 between the obligor's monthly net income and the obligee's
 255 monthly net income or 20 percent of the obligor's monthly net
 256 income.

257 (b) There is no presumption in favor of either party in
 258 awarding alimony for a mid-term marriage. A party seeking
 259 alimony shall prove by a preponderance of the evidence a need
 260 for alimony. If the court finds that the party has met its
 261 burden in demonstrating a need for alimony, the court shall
 262 determine a monthly alimony obligation that may not exceed the
 263 lesser of 50 percent of the difference between the obligor's
 264 monthly net income and the obligee's monthly net income or the
 265 following:

266 1. For a marriage of more than 10 years but less than 11
 267 years, 20 percent of the monthly net income of the obligor.

268 2. For a marriage of at least 11 years but less than 12
 269 years, 22 percent of the monthly net income of the obligor.

270 3. For a marriage of at least 12 years but less than 13
 271 years, 23 percent of the monthly net income of the obligor.

272 4. For a marriage of at least 13 years but less than 14
 273 years, 24 percent of the monthly net income of the obligor.

274 5. For a marriage of at least 14 years but less than 15
 275 years, 25 percent of the monthly net income of the obligor.

276 6. For a marriage of at least 15 years but less than 16
 277 years, 26 percent of the monthly net income of the obligor.

278 7. For a marriage of at least 16 years but less than 17
 279 years, 27 percent of the monthly net income of the obligor.

280 8. For a marriage of at least 17 years but less than 18

281 years, 28 percent of the monthly net income of the obligor.

282 9. For a marriage of at least 18 years but less than 19
 283 years, 29 percent of the monthly net income of the obligor.

284 10. For a marriage of at least 19 years but less than 20
 285 years, 30 percent of the monthly net income of the obligor.

286 (c) There is a presumption in favor of awarding alimony
 287 for a long-term marriage. A party against whom alimony is sought
 288 for such a marriage may overcome this presumption by
 289 demonstrating by clear and convincing evidence that there is no
 290 need for alimony. If the court finds that the party against whom
 291 alimony is sought fails to meet its burden in demonstrating no
 292 need for alimony, the court shall determine a monthly alimony
 293 obligation that shall not exceed the lesser of 50 percent of the
 294 difference between the obligor's monthly net income and the
 295 obligee's monthly net income or the following:

296 1. For a marriage of at least 20 years but less than 21
 297 years, 31 percent of the monthly net income of the obligor.

298 2. For a marriage of at least 21 years but less than 22
 299 years, 32 percent of the monthly net income of the obligor.

300 3. For a marriage of at least 22 years, 33 percent of the
 301 monthly net income of the obligor.

302 (9) Notwithstanding subsection (8), the court may increase
 303 the percentage of monthly net income for purposes of determining
 304 alimony by up to an additional 10 percentage points, to a
 305 maximum of 43 percent of the monthly net income of the obligor,
 306 if the party seeking alimony proves by clear and convincing
 307 evidence that he or she is disabled or 65 years of age or older.
 308 For purposes of this subsection:

309 (a) Disability may be proved only by a social security
 310 total disability benefit entitlement letter.

311 (b) Age may be proved only by an original birth
 312 certificate or a Florida driver license ~~Permanent alimony may be~~
 313 ~~awarded to provide for the needs and necessities of life as they~~
 314 ~~were established during the marriage of the parties for a party~~
 315 ~~who lacks the financial ability to meet his or her needs and~~
 316 ~~necessities of life following a dissolution of marriage.~~

317 ~~Permanent alimony may be awarded following a marriage of long~~
 318 ~~duration if such an award is appropriate upon consideration of~~
 319 ~~the factors set forth in subsection (2), following a marriage of~~
 320 ~~moderate duration if such an award is appropriate based upon~~
 321 ~~clear and convincing evidence after consideration of the factors~~
 322 ~~set forth in subsection (2), or following a marriage of short~~
 323 ~~duration if there are written findings of exceptional~~
 324 ~~circumstances. In awarding permanent alimony, the court shall~~
 325 ~~include a finding that no other form of alimony is fair and~~
 326 ~~reasonable under the circumstances of the parties. An award of~~
 327 ~~permanent alimony terminates upon the death of either party, or~~
 328 ~~upon the remarriage of the party receiving alimony. An award may~~
 329 ~~be modified or terminated based upon a substantial change in~~
 330 ~~circumstances or upon the existence of a supportive relationship~~
 331 ~~in accordance with s. 61.14.~~

332 (10)(9) Notwithstanding any other law, alimony may not be
 333 awarded to a party who has a monthly net income that is equal to
 334 or greater than the other party. Except in the case of a long-
 335 term marriage, the court, in awarding alimony, shall impute
 336 income to the obligor and obligee as follows, based solely on

337 federal tax returns:

338 (a) Obligor.—Social security retirement benefits shall not
 339 be imputed to an obligor, as demonstrated by a social security
 340 retirement benefits entitlement letter.

341 (b) Obligee.—

342 1. If an obligee is unemployed at the time the petition is
 343 filed and has been unemployed for less than 1 year before the
 344 time of the filing of the petition, an obligee's monthly net
 345 income shall be imputed at 90 percent of the obligee's previous
 346 monthly net income.

347 2. If an obligee is unemployed at the time the petition is
 348 filed and has been unemployed for at least 1 year but less than
 349 2 years before the time of the filing of the petition, an
 350 obligee's monthly net income shall be imputed at 80 percent of
 351 the obligee's previous monthly net income.

352 3. If an obligee is unemployed at the time the petition is
 353 filed and has been unemployed for at least 2 years but less than
 354 3 years before the time of the filing of the petition, an
 355 obligee's monthly net income shall be imputed at 70 percent of
 356 the obligee's previous monthly net income.

357 4. If an obligee is unemployed at the time the petition is
 358 filed and has been unemployed for at least 3 years but less than
 359 4 years before the time of the filing of the petition, an
 360 obligee's monthly net income shall be imputed at 60 percent of
 361 the obligee's previous monthly net income.

362 5. If an obligee is unemployed at the time the petition is
 363 filed and has been unemployed for at least 4 years but less than
 364 5 years before the time of the filing of the petition, an

365 obligee's monthly net income shall be imputed at 50 percent of
 366 the obligee's previous monthly net income.

367 6. If an obligee is unemployed at the time the petition is
 368 filed and has been unemployed for 5 years or greater before the
 369 time of the filing of the petition, an obligee's monthly net
 370 income shall be imputed at 40 percent of the obligee's previous
 371 monthly net income, or the monthly net income of a minimum wage
 372 earner at the time of the filing of the petition, whichever is
 373 greater.

374 7. The court shall reduce the imputation of income
 375 specified in this paragraph if the obligee proves by a
 376 preponderance of the evidence that he or she does not have the
 377 ability to earn the imputed income through reasonable means ~~The~~
 378 ~~award of alimony may not leave the payor with significantly less~~
 379 ~~net income than the net income of the recipient unless there are~~
 380 ~~written findings of exceptional circumstances.~~

381 (11)-(10)(a) With respect to any order requiring the
 382 payment of alimony entered on or after January 1, 1985, unless
 383 ~~the provisions of paragraph (c) or paragraph (d) applies~~ apply,
 384 the court shall direct in the order that the payments of alimony
 385 be made through the appropriate depository as provided in s.
 386 61.181.

387 (b) With respect to any order requiring the payment of
 388 alimony entered before January 1, 1985, upon the subsequent
 389 appearance, on or after that date, of one or both parties before
 390 the court having jurisdiction for the purpose of modifying or
 391 enforcing the order or in any other proceeding related to the
 392 order, or upon the application of either party, unless ~~the~~

393 ~~provisions of~~ paragraph (c) or paragraph (d) applies apply, the
 394 court shall modify the terms of the order as necessary to direct
 395 that payments of alimony be made through the appropriate
 396 depository as provided in s. 61.181.

397 (c) If there is no minor child, alimony payments need not
 398 be directed through the depository.

399 (d)1. If there is a minor child of the parties and both
 400 parties so request, the court may order that alimony payments
 401 need not be directed through the depository. In this case, the
 402 order of support shall provide, or be deemed to provide, that
 403 either party may subsequently apply to the depository to require
 404 that payments be made through the depository. The court shall
 405 provide a copy of the order to the depository.

406 2. If ~~the provisions of~~ subparagraph 1. applies apply,
 407 either party may subsequently file with the depository an
 408 affidavit alleging default or arrearages in payment and stating
 409 that the party wishes to initiate participation in the
 410 depository program. The party shall provide copies of the
 411 affidavit to the court and the other party or parties. Fifteen
 412 days after receipt of the affidavit, the depository shall notify
 413 all parties that future payments shall be directed to the
 414 depository.

415 3. In IV-D cases, the IV-D agency shall have the same
 416 rights as the obligee in requesting that payments be made
 417 through the depository.

418 (12) Notwithstanding any other law, to the extent that the
 419 determination of equitable distribution or child support may
 420 affect an obligee's need for alimony or an obligor's ability to

421 pay alimony, the court may offset or otherwise consider an
 422 alimony obligation in determining equitable distribution or
 423 child support under this chapter.

424 Section 3. Section 61.09, Florida Statutes, is amended to
 425 read:

426 61.09 ~~Alimony and~~ Child support unconnected with
 427 dissolution.—If a person having the ability to contribute to the
 428 ~~maintenance of his or her spouse and~~ support of his or her minor
 429 child fails to do so, the spouse who is not receiving support
 430 may apply to the court for ~~alimony and for~~ support for the child
 431 without seeking dissolution of marriage, and the court shall
 432 enter an order as it deems just and proper.

433 Section 4. Paragraph (b) of subsection (1) and paragraph
 434 (a) of subsection (5) of section 61.14, Florida Statutes, are
 435 amended, paragraphs (c) and (d) are added to subsection (11) of
 436 that section, and subsection (12) is added to that section, to
 437 read:

438 61.14 Enforcement and modification of support,
 439 maintenance, or alimony agreements or orders.—

440 (1)

441 (b)1. An alimony order shall be modified upon a showing of
 442 a substantial change in circumstances by clear and convincing
 443 evidence. Clear and convincing evidence shall include, but is
 444 not limited to, federal income tax returns. An increase in an
 445 obligor's income may not be considered permanent in nature
 446 unless the increase has been maintained without interruption for
 447 at least 2 years, taking into account the obligor's ability to
 448 sustain his or her income.

449 2.1- Notwithstanding subparagraph 1., the court must ~~may~~
 450 reduce or terminate an award of alimony upon specific written
 451 findings by the court that since the granting of a divorce and
 452 the award of alimony a supportive relationship has existed
 453 between the obligee and another a person ~~with whom the obligee~~
 454 ~~resides,~~ except upon a showing by clear and convincing evidence
 455 by the obligee that his or her long-term need for alimony,
 456 taking into account the totality of the circumstance, has not
 457 been reduced by the supportive relationship. On the issue of
 458 whether alimony should be reduced or terminated under this
 459 paragraph, the burden is on the obligor to prove by a
 460 preponderance of the evidence that a supportive relationship
 461 exists.

462 3.2- In determining whether an existing award of alimony
 463 should be reduced or terminated because of an alleged supportive
 464 relationship between an obligee and a person who is not related
 465 by consanguinity or affinity and with whom the obligee resides,
 466 the court shall elicit the nature and extent of the relationship
 467 in question. The court shall give consideration, without
 468 limitation, to circumstances, including, but not limited to, the
 469 following~~7~~ in determining the relationship of an obligee to
 470 another person:

471 a. The extent to which the obligee and the other person
 472 have held themselves out as a married couple by engaging in
 473 conduct such as using the same last name, using a common mailing
 474 address, referring to each other in terms such as "my husband"
 475 or "my wife," or otherwise conducting themselves in a manner
 476 that evidences a permanent supportive relationship.

477 b. The period of time that the obligee has resided with
478 the other person in a permanent place of abode.

479 c. The extent to which the obligee and the other person
480 have pooled their assets or income or otherwise exhibited
481 financial interdependence.

482 d. The extent to which the obligee or the other person has
483 supported the other, in whole or in part.

484 e. The extent to which the obligee or the other person has
485 performed valuable services for the other.

486 f. The extent to which the obligee or the other person has
487 performed valuable services for the other's company or employer.

488 g. Whether the obligee and the other person have worked
489 together to create or enhance anything of value.

490 h. Whether the obligee and the other person have jointly
491 contributed to the purchase of any real or personal property.

492 i. Evidence in support of a claim that the obligee and the
493 other person have an express agreement regarding property
494 sharing or support.

495 j. Evidence in support of a claim that the obligee and the
496 other person have an implied agreement regarding property
497 sharing or support.

498 k. Whether the obligee and the other person have provided
499 support to the children of one another, regardless of any legal
500 duty to do so.

501 4.3. This paragraph does not abrogate the requirement that
502 every marriage in this state be solemnized under a license, does
503 not recognize a common law marriage as valid, and does not
504 recognize a de facto marriage. This paragraph recognizes only

505 that relationships do exist that provide economic support
 506 equivalent to a marriage and that alimony terminable on
 507 remarriage may be reduced or terminated upon the establishment
 508 of equivalent equitable circumstances as described in this
 509 paragraph. The existence of a conjugal relationship, though it
 510 may be relevant to the nature and extent of the relationship, is
 511 not necessary for the application of ~~the provisions of~~ this
 512 paragraph.

513 5. There shall be a rebuttable presumption that any
 514 modification or termination of an alimony award is retroactive
 515 to the date of the filing of the petition. In an action under
 516 this section, if it is determined that the obligee unnecessarily
 517 or unreasonably litigated the underlying petition for
 518 modification or termination, the court may award the obligor his
 519 or her reasonable attorney fees and costs pursuant to s. 61.16
 520 and applicable case law.

521 6. A court terminating an alimony award based on the
 522 existence of a supportive relationship may not reserve
 523 jurisdiction to later reinstate alimony.

524 (5) (a) When a court of competent jurisdiction enters an
 525 order for the payment of alimony or child support or both, the
 526 court shall make a finding of the obligor's imputed or actual
 527 present ability to comply with the order. If the obligor
 528 subsequently fails to pay alimony or support and a contempt
 529 hearing is held, the original order of the court creates a
 530 presumption that the obligor has the present ability to pay the
 531 alimony or support and to purge himself or herself from the
 532 contempt. At the contempt hearing, the obligor shall have the

533 | burden of proof to show that he or she lacks the ability to
 534 | purge himself or herself from the contempt. This presumption is
 535 | adopted as a presumption under s. 90.302(2) to implement the
 536 | public policy of this state that children shall be maintained
 537 | from the resources of their parents and as provided for in s.
 538 | 409.2551, and that spouses be maintained as provided for in s.
 539 | 61.08. The court shall state in its order the reasons for
 540 | granting or denying the contempt. A monetary award granted by
 541 | the court pursuant to a contempt hearing pursuant to this
 542 | paragraph may not exceed the monthly alimony obligation of the
 543 | obligor for the number of months in which the obligor is
 544 | delinquent. A court may award attorney fees to a prevailing
 545 | party in an action to enforce an alimony order.

546 | (11)

547 | (c) If the obligor remarries or resides with another
 548 | person, the income and assets of the obligor's spouse or the
 549 | person with whom the obligor resides may not be considered in a
 550 | modification action regarding such obligor, except for purposes
 551 | of discovery to determine the obligor's income or assets within
 552 | the pooled income and assets.

553 | (d) If the court orders alimony payable concurrent with a
 554 | child support order, the alimony award may not be modified
 555 | solely because of a later reduction or termination of child
 556 | support payments.

557 | (12)(a) The fact that an obligor has reached a reasonable
 558 | retirement age for his or her profession, has retired, and has
 559 | no intent to return to work, or has reached the retirement age
 560 | for full social security benefits, shall be considered a

561 substantial change in circumstances as a matter of law. An
 562 obligor who has reached the retirement age for full social
 563 security benefits is considered to have reached a reasonable
 564 retirement age. With regard to an obligor that has retired
 565 before the retirement age for full social security benefits, the
 566 court shall consider the following in determining whether the
 567 obligor's retirement age is reasonable:

- 568 1. Age.
- 569 2. Health.
- 570 3. Type of work.
- 571 4. Normal retirement age for that type of work.

572 (b) In anticipation of retirement, the obligor may file a
 573 petition for termination or modification of the alimony award
 574 effective upon the earlier of the retirement date or the date
 575 the obligor reaches the retirement age for full social security
 576 benefits. The court shall either terminate the award or reduce
 577 the award based on the circumstances of the parties after
 578 retirement and based on the factors in s. 61.08(3), unless the
 579 obligee proves by clear and convincing evidence that the need
 580 for alimony at the present level continues to exist and that the
 581 obligor's ability to pay has not been diminished.

582 Section 5. Section 61.19, Florida Statutes, is amended to
 583 read:

584 61.19 Entry of judgment of dissolution of marriage; ~~7~~ delay
 585 period; separate adjudication of issues.-

586 (1) A ~~No~~ final judgment of dissolution of marriage may not
 587 be entered until at least 20 days have elapsed from the date of
 588 filing the original petition for dissolution of marriage, ~~7~~ but

589 the court, on a showing that injustice would result from this
 590 delay, may enter a final judgment of dissolution of marriage at
 591 an earlier date.

592 (2) (a) During the first 180 days after the date of service
 593 of the original petition for dissolution of marriage, the court
 594 may not grant a final dissolution of marriage with a reservation
 595 of jurisdiction to subsequently determine all other substantive
 596 issues unless the court makes written findings that there are
 597 exceptional circumstances that make the use of this process
 598 clearly necessary to protect the parties or their children and
 599 that granting a final dissolution will not cause irreparable
 600 harm to either party or the children. Before granting a final
 601 dissolution of marriage with a reservation of jurisdiction to
 602 subsequently determine all other substantive issues, the court
 603 shall enter appropriate temporary orders necessary to protect
 604 the parties and their children, which orders shall remain
 605 effective until all other issues can be adjudicated by the
 606 court. The desire of one of the parties to remarry does not
 607 justify the use of this process.

608 (b) If more than 180 days have elapsed after the date of
 609 service of the original petition for dissolution of marriage,
 610 the court may grant a final dissolution of marriage with a
 611 reservation of jurisdiction to subsequently determine all other
 612 substantive issues only if the court enters appropriate
 613 temporary orders necessary to protect the parties and their
 614 children, which orders shall remain effective until such time as
 615 all other issues can be adjudicated by the court, and makes a
 616 written finding that no irreparable harm will result from

617 granting a final dissolution.

618 (c) If more than 365 days have elapsed after the date of
 619 service of the original petition for dissolution of marriage,
 620 absent a showing by either party that irreparable harm will
 621 result from granting a final dissolution, the court shall, upon
 622 request of either party, immediately grant a final dissolution
 623 of marriage with a reservation of jurisdiction to subsequently
 624 determine all other substantive issues. Before granting a final
 625 dissolution of marriage with a reservation of jurisdiction to
 626 subsequently determine all other substantive issues, the court
 627 shall enter appropriate temporary orders necessary to protect
 628 the parties and their children, which orders shall remain
 629 effective until all other issues can be adjudicated by the
 630 court.

631 (d) The temporary orders necessary to protect the parties
 632 and their children entered before granting a dissolution of
 633 marriage without an adjudication of all substantive issues may
 634 include, but are not limited to, temporary orders that:

- 635 1. Restrict the sale or disposition of property.
- 636 2. Protect and preserve the marital assets.
- 637 3. Establish temporary support.
- 638 4. Provide for maintenance of health insurance.
- 639 5. Provide for maintenance of life insurance.

640 (e) The court is not required to enter temporary orders to
 641 protect the parties and their children if the court enters a
 642 final judgment of dissolution of marriage that adjudicates
 643 substantially all of the substantive issues between the parties
 644 but reserves jurisdiction to address ancillary issues such as

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645 the entry of a qualified domestic relations order or the
 646 adjudication of attorney fees and costs.

647 Section 6. (1) The amendments made by this act to chapter
 648 61, Florida Statutes, apply to all initial awards of alimony
 649 entered on or after July 1, 2013, and to all modifications of
 650 alimony of such awards made after July 1, 2013. Such amendments
 651 may serve as a basis to modify awards entered before July 1,
 652 2013, or as a basis to change amounts or duration of awards
 653 existing before July 1, 2013.

654 (2) An obligor whose initial award or modification of such
 655 award was made before July 1, 2013, may file a modification
 656 action according to the following schedule:

657 (a) An obligor who was married to the alimony recipient 8
 658 years or less may file a modification action on or after July 1,
 659 2013.

660 (b) An obligor who was married to the alimony recipient 15
 661 years or less, but more than 8 years, may file a modification
 662 action on or after July 1, 2014.

663 (c) An obligor who was married to the alimony recipient
 664 more than 15 years may file a modification action on or after
 665 July 1, 2015.

666 Section 7. This act shall take effect July 1, 2013.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Workman offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money therefor.

Section 2. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—



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21 (1) For purposes of this section, the term:

22 (a) "Alimony" means a court-ordered payment of support by
23 an obligor to an obligee after the dissolution of a marriage.

24 (b) "Long-term marriage" means a marriage having a
25 duration of 20 years or more, as measured from the date of the
26 marriage to the date of filing the petition for dissolution.

27 (c) "Mid-term marriage" means a marriage having a duration
28 of more than 10 years but less than 20 years, as measured from
29 the date of the marriage to the date of filing the petition for
30 dissolution.

31 (d) "Net income" means net income as determined in
32 accordance with s. 61.30.

33 (e) "Short-term marriage" means a marriage having a
34 duration equal to or less than 10 years, as measured from the
35 date of the marriage to the date of filing the petition for
36 dissolution.

37 (2) (a) (+) In a proceeding for dissolution of marriage, the
38 court may grant alimony to either party in the form of, ~~which~~
39 ~~alimony may be~~ bridge-the-gap, rehabilitative, or durational
40 ~~alimony, or a permanent in nature or any~~ combination of these
41 forms of alimony, but shall prioritize an award of bridge-the-
42 gap alimony, followed by rehabilitative alimony, over any other
43 form of alimony. In an ~~any~~ award of alimony, the court may order
44 periodic payments, ~~or~~ payments in lump sum, or both. Alimony may
45 not be awarded in any other action.

46 (b) The court shall make written findings regarding the
47 basis for awarding a combination of forms of alimony, including
48 the type of alimony and length of time for which it is awarded.



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49 The court may award only a combination of forms of alimony to
50 provide greater economic assistance in order to allow the
51 recipient to achieve rehabilitation.

52 (c) The court may consider the adultery of either party
53 spouse and the circumstances thereof in determining the amount
54 of alimony, if any, to be awarded.

55 (d) In all dissolution actions, the court shall include
56 written findings of fact relative to the factors enumerated in
57 subsection (3)-(2) supporting an award or denial of alimony.

58 (e) An award of alimony granted under this section
59 automatically terminates without further action of either party
60 or the court upon the earlier of:

- 61 1. The durational limits specified in this section; or
62 2. The obligee's normal retirement age for social security
63 retirement benefits.

64
65 If the obligee proves by clear and convincing evidence that the
66 need for alimony continues to exist and the court determines
67 that the obligor continues to have the ability to pay, the court
68 shall issue written findings justifying an extension of alimony
69 consistent with the provisions of this section.

70 (f) The clerk of the court shall, upon request, indicate
71 in writing that an alimony obligation has terminated in
72 accordance with paragraph (e), unless there is a pending motion
73 before the court disputing the fulfillment of the alimony
74 obligation.

75 (3)-(2) The party seeking alimony has the burden of proof
76 of demonstrating a need for alimony in accordance with



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77 subsection (8) and that the other party has the ability to pay
78 alimony. In determining whether to award alimony ~~or maintenance~~,
79 the court shall ~~first~~ make, in writing, a specific factual
80 determination as to whether the other ~~either party has an actual~~
81 ~~need for alimony or maintenance and whether either party has the~~
82 ability to pay alimony ~~or maintenance~~. If the court finds that
83 the a party seeking alimony has met its burden of proof in
84 demonstrating a need for alimony ~~or maintenance~~ and that the
85 other party has the ability to pay alimony ~~or maintenance~~, then
86 in determining the proper type and amount of alimony ~~or~~
87 ~~maintenance~~ under subsections (5)-(9) ~~(5)-(8)~~, the court shall
88 consider all relevant factors, including, ~~but not limited to:~~
89 ~~(a) The standard of living established during the~~
90 ~~marriage.~~
91 (a) ~~(b)~~ The duration of the marriage.
92 (b) ~~(c)~~ The age and the physical and emotional condition of
93 each party.
94 (c) ~~(d)~~ The financial resources of each party, including
95 the portion of nonmarital assets that were relied upon by the
96 parties during the marriage and the marital assets and
97 liabilities distributed to each.
98 (d) ~~(e)~~ The earning capacities, educational levels,
99 vocational skills, and employability of the parties and, when
100 applicable, the time necessary for either party to acquire
101 sufficient education or training to enable such party to find
102 appropriate employment.



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103 ~~(e)-(f)~~ The contribution of each party to the marriage,
104 including, but not limited to, services rendered in homemaking,
105 child care, education, and career building of the other party.

106 ~~(f)-(g)~~ The responsibilities each party will have with
107 regard to any minor children that the parties ~~they~~ have in
108 common.

109 ~~(g)-(h)~~ The tax treatment and consequences to both parties
110 of an any alimony award, which must be consistent with
111 applicable state and federal tax laws and may include ~~including~~
112 the designation of all or a portion of the payment as a
113 nontaxable, nondeductible payment.

114 ~~(h)-(i)~~ All sources of income available to either party,
115 including income available to either party through investments
116 of any asset held by that party which was acquired during the
117 marriage or acquired outside the marriage and relied upon during
118 the marriage.

119 ~~(i)~~ The net income and standard of living available to
120 each party after the application of the alimony award. There is
121 a rebuttable presumption that both parties will have a lower
122 standard of living after the dissolution of marriage than the
123 standard of living they enjoyed during the marriage. This
124 presumption may be overcome by a preponderance of the evidence.

125 ~~(j)~~ Any other factor necessary to do equity and justice
126 between the parties, if that factor is specifically identified
127 in the award with findings of fact justifying the application of
128 the factor.

129 ~~(4)-(3)~~ To the extent necessary to protect an award of
130 alimony, the court may order any party who is ordered to pay



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131 alimony to purchase or maintain a decreasing term life insurance
132 policy or a bond, or to otherwise secure such alimony award with
133 any other assets that which may be suitable for that purpose, in
134 an amount adequate to secure the alimony award. Any such
135 security may be awarded only upon a showing of special
136 circumstances. If the court finds special circumstances and
137 awards such security, the court must make specific evidentiary
138 findings regarding the availability, cost, and financial impact
139 on the obligated party. Any security may be modifiable in the
140 event that the underlying alimony award is modified and shall be
141 reduced in an amount commensurate with any reduction in the
142 alimony award.

143 ~~(4) For purposes of determining alimony, there is a~~
144 ~~rebuttable presumption that a short term marriage is a marriage~~
145 ~~having a duration of less than 7 years, a moderate term marriage~~
146 ~~is a marriage having a duration of greater than 7 years but less~~
147 ~~than 17 years, and long term marriage is a marriage having a~~
148 ~~duration of 17 years or greater. The length of a marriage is the~~
149 ~~period of time from the date of marriage until the date of~~
150 ~~filing of an action for dissolution of marriage.~~

151 (5) Bridge-the-gap alimony may be awarded to assist a
152 party by providing support to allow the party to make a
153 transition from being married to being single. Bridge-the-gap
154 alimony is designed to assist a party with legitimate
155 identifiable short-term needs, and the length of an award may
156 not exceed 2 years. An award of bridge-the-gap alimony
157 terminates upon the death of either party or upon the remarriage



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158 of the party receiving alimony. An award of bridge-the-gap
159 alimony is ~~shall~~ not be modifiable in amount or duration.

160 (6) (a) Rehabilitative alimony may be awarded to assist a
161 party in establishing the capacity for self-support through
162 either:

163 1. The redevelopment of previous skills or credentials; or

164 2. The acquisition of education, training, or work
165 experience necessary to develop appropriate employment skills or
166 credentials.

167 (b) In order to award rehabilitative alimony, there must
168 be a specific and defined rehabilitative plan which shall be
169 included as a part of any order awarding rehabilitative alimony.

170 (c) An award of rehabilitative alimony may be modified or
171 terminated only during the rehabilitative period in accordance
172 with s. 61.14 based upon a substantial change in circumstances,
173 upon noncompliance with the rehabilitative plan, or upon
174 completion of the rehabilitative plan.

175 (7) Durational alimony may be awarded ~~when permanent~~
176 ~~periodic alimony is inappropriate. The purpose of durational~~
177 ~~alimony is to provide a party with economic assistance for a set~~
178 ~~period of time following a short-term, mid-term, or long-term~~
179 ~~marriage of short or moderate duration or following a marriage~~
180 ~~of long duration if there is no ongoing need for support on a~~
181 ~~permanent basis. When awarding durational alimony, the court~~
182 ~~must make written findings that an award of another form of~~
183 ~~alimony or a combination of the other forms of alimony is not~~
184 ~~appropriate.~~ An award of durational alimony terminates upon the
185 death of either party or upon the remarriage of the party



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186 receiving alimony. The amount of an award of durational alimony
187 shall may be modified or terminated based upon a substantial
188 change in circumstances or upon the existence of a supportive
189 relationship in accordance with s. 61.14. ~~However,~~ The length of
190 an award of durational alimony may not ~~be modified except under~~
191 ~~exceptional circumstances and may not~~ exceed 50 percent of the
192 length of the marriage, unless the party seeking alimony proves
193 by clear and convincing evidence that exceptional circumstances
194 justify the need for a longer award of alimony, which
195 exceptional circumstances must be set out in writing by the
196 court the length of the marriage.

197 (8) (a) There is a rebuttable presumption against awarding
198 alimony for a short-term marriage. A party seeking alimony may
199 overcome this presumption by demonstrating by clear and
200 convincing evidence a need for alimony. If the court finds that
201 the party has met its burden in demonstrating a need for alimony
202 and that the other party has the ability to pay alimony, the
203 court shall determine a monthly award of alimony that may not
204 exceed 20 percent of the obligor's monthly net income.

205 (b) There is no presumption in favor of either party to an
206 award of alimony for a mid-term marriage. A party seeking such
207 alimony must prove by a preponderance of the evidence a need for
208 alimony. If the court finds that the party has met its burden in
209 demonstrating a need for alimony and that the other party has
210 the ability to pay alimony, the court shall determine a monthly
211 alimony obligation that may not exceed 30 percent of the
212 obligor's monthly net income.



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213 (c) There is a rebuttable presumption in favor of awarding
214 alimony for a long-term marriage. A party against whom alimony
215 is sought may overcome this presumption by demonstrating by
216 clear and convincing evidence that there is no need for alimony.
217 If the court finds that the party against whom alimony is sought
218 fails to meet its burden to demonstrate that there is no need
219 for alimony and that the party has the ability to pay alimony,
220 the court shall determine a monthly alimony obligation that may
221 not exceed 33 percent of the obligor's monthly net income.

222 (9) The court may order alimony exceeding the monthly net
223 income limits established in subsection (8) if the court
224 determines, in accordance with the factors in subsection (3),
225 that there is a need for additional alimony, which determination
226 must be set out in writing. Permanent alimony may be awarded to
227 provide for the needs and necessities of life as they were
228 established during the marriage of the parties for a party who
229 lacks the financial ability to meet his or her needs and
230 necessities of life following a dissolution of marriage.
231 Permanent alimony may be awarded following a marriage of long
232 duration if such an award is appropriate upon consideration of
233 the factors set forth in subsection (2), following a marriage of
234 moderate duration if such an award is appropriate based upon
235 clear and convincing evidence after consideration of the factors
236 set forth in subsection (2), or following a marriage of short
237 duration if there are written findings of exceptional
238 circumstances. In awarding permanent alimony, the court shall
239 include a finding that no other form of alimony is fair and
240 reasonable under the circumstances of the parties. An award of



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241 ~~permanent alimony terminates upon the death of either party or~~
242 ~~upon the remarriage of the party receiving alimony. An award may~~
243 ~~be modified or terminated based upon a substantial change in~~
244 ~~circumstances or upon the existence of a supportive relationship~~
245 ~~in accordance with s. 61.14.~~

246 (10) A party against whom alimony is sought who has met
247 the requirements for retirement in accordance with s. 61.14(12)
248 before the filing of the petition for dissolution is not
249 required to pay alimony unless the party seeking alimony proves
250 by clear and convincing evidence the other party has the ability
251 to pay alimony, in addition to all other requirements of this
252 section.

253 (11)(9) Notwithstanding any other law, alimony may not be
254 awarded to a party who has a monthly net income that is equal to
255 or more than the other party. Except in the case of a long-term
256 marriage, in awarding alimony, the court shall impute income to
257 the obligor and obligee as follows:

258 (a) In the case of the obligor, social security retirement
259 benefits may not be imputed to the obligor, as demonstrated by a
260 social security retirement benefits entitlement letter.

261 (b) In the case of the obligee, if the obligee:

262 1. Is unemployed at the time the petition is filed and has
263 been unemployed for less than 1 year before the time of the
264 filing of the petition, the obligee's monthly net income shall
265 be imputed at 90 percent of the obligee's prior monthly net
266 income.

267 2. Is unemployed at the time the petition is filed and has
268 been unemployed for at least 1 year but less than 2 years before



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269 the time of the filing of the petition, the obligee's monthly
270 net income shall be imputed at 80 percent of the obligee's prior
271 monthly net income.

272 3. Is unemployed at the time the petition is filed and has
273 been unemployed for at least 2 years but less than 3 years
274 before the time of the filing of the petition, the obligee's
275 monthly net income shall be imputed at 70 percent of the
276 obligee's prior monthly net income.

277 4. Is unemployed at the time the petition is filed and has
278 been unemployed for at least 3 years but less than 4 years
279 before the time of the filing of the petition, the obligee's
280 monthly net income shall be imputed at 60 percent of the
281 obligee's prior monthly net income.

282 5. Is unemployed at the time the petition is filed and has
283 been unemployed for at least 4 years but less than 5 years
284 before the time of the filing of the petition, the obligee's
285 monthly net income shall be imputed at 50 percent of the
286 obligee's prior monthly net income.

287 6. Is unemployed at the time the petition is filed and has
288 been unemployed for at least 5 years before the time of the
289 filing of the petition, the obligee's monthly net income shall
290 be imputed at 40 percent of the obligee's prior monthly net
291 income, or the monthly net income of a minimum wage earner at
292 the time of the filing of the petition, whichever is greater.

293 7. Proves by a preponderance of the evidence that he or
294 she does not have the ability to earn the imputed income through
295 reasonable means, the court shall reduce the imputation of
296 income specified in this paragraph. If the obligee alleges that



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297 a physical disability has impaired his or her ability to earn
298 the imputed income, such disability must meet the definition of
299 disability as determined by the Social Security Administration.

300 ~~The award of alimony may not leave the payor with significantly~~
301 ~~less net income than the net income of the recipient unless~~
302 ~~there are written findings of exceptional circumstances.~~

303 (12) (a) ~~(10) (a)~~ With respect to any order requiring the
304 payment of alimony entered on or after January 1, 1985, unless
305 ~~the provisions of~~ paragraph (c) or paragraph (d) applies apply,
306 the court shall direct in the order that the payments of alimony
307 be made through the appropriate depository as provided in s.
308 61.181.

309 (b) With respect to any order requiring the payment of
310 alimony entered before January 1, 1985, upon the subsequent
311 appearance, on or after that date, of one or both parties before
312 the court having jurisdiction for the purpose of modifying or
313 enforcing the order or in any other proceeding related to the
314 order, or upon the application of either party, unless ~~the~~
315 ~~provisions of~~ paragraph (c) or paragraph (d) applies apply, the
316 court shall modify the terms of the order as necessary to direct
317 that payments of alimony be made through the appropriate
318 depository as provided in s. 61.181.

319 (c) If there is no minor child, alimony payments need not
320 be directed through the depository.

321 (d)1. If there is a minor child of the parties and both
322 parties so request, the court may order that alimony payments
323 need not be directed through the depository. In this case, the
324 order of support must shall provide, or be deemed to provide,



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325 that either party may subsequently apply to the depository to
326 require that payments be made through the depository. The court
327 shall provide a copy of the order to the depository.

328 2. If ~~the provisions of~~ subparagraph 1. applies apply,
329 either party may subsequently file with the depository an
330 affidavit alleging default or arrearages in payment and stating
331 that the party wishes to initiate participation in the
332 depository program. The party shall provide copies of the
333 affidavit to the court and the other party or parties. Fifteen
334 days after receipt of the affidavit, the depository shall notify
335 all parties that future payments shall be directed to the
336 depository.

337 3. In IV-D cases, the IV-D agency has ~~shall have~~ the same
338 rights as the obligee in requesting that payments be made
339 through the depository.

340 Section 3. Section 61.09, Florida Statutes, is amended to
341 read:

342 61.09 Alimony and child support unconnected with
343 dissolution.—If a person having the ability to contribute to the
344 maintenance of his or her spouse and support of his or her minor
345 child fails to do so, the spouse who is not receiving support
346 may apply to the court for alimony and for support for the child
347 without seeking dissolution of marriage, and the court shall
348 enter an order as it deems just and proper. Alimony awarded
349 under this section shall be calculated in accordance with s.
350 61.08.

351 Section 4. Subsection (1) of section 61.14, Florida
352 Statutes, is amended, paragraph (c) is added to subsection (11)



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353 of that section, and subsection (12) is added to that section,
354 to read:

355 61.14 Enforcement and modification of support,
356 maintenance, or alimony agreements or orders.—

357 (1) (a) When the parties enter into an agreement for
358 payments for, or instead of, support, maintenance, or alimony,
359 whether in connection with a proceeding for dissolution or
360 separate maintenance or with any voluntary property settlement,
361 or when a party is required by court order to make any payments,
362 and the circumstances or the financial ability of either party
363 changes or the child who is a beneficiary of an agreement or
364 court order as described herein reaches majority after the
365 execution of the agreement or the rendition of the order, either
366 party may apply to the circuit court of the circuit in which the
367 parties, or either of them, resided at the date of the execution
368 of the agreement or reside at the date of the application, or in
369 which the agreement was executed or in which the order was
370 rendered, for an order terminating, decreasing, or increasing
371 the amount of support, maintenance, or alimony, and the court
372 has jurisdiction to make orders as equity requires, with due
373 regard to the changed circumstances or the financial ability of
374 the parties or the child, decreasing, increasing, or confirming
375 the amount of separate support, maintenance, or alimony provided
376 for in the agreement or order. A finding that medical insurance
377 is reasonably available or the child support guidelines schedule
378 in s. 61.30 may constitute changed circumstances. Except as
379 otherwise provided in s. 61.30(11)(c), the court may modify an
380 order of support, maintenance, or alimony by terminating,



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381 increasing, or decreasing the support, maintenance, or alimony
382 retroactively to the date of the filing of the action or
383 supplemental action for modification as equity requires, giving
384 due regard to the changed circumstances or the financial ability
385 of the parties or the child.

386 (b)1. If the court has determined that an existing alimony
387 award as determined by the court at the time of dissolution is
388 insufficient to meet the needs of the obligee, and that such
389 need continues to exist, an alimony order shall be modified
390 upward upon a showing by clear and convincing evidence of a
391 permanently increased ability to pay alimony. Clear and
392 convincing evidence must include, but need not limited to,
393 federal tax returns. An increase in an obligor's income may not
394 be considered permanent in nature unless the increase has been
395 maintained without interruption for at least 2 years, taking
396 into account the obligor's ability to sustain his or her income.

397 2.1. Notwithstanding subparagraph 1., the court shall may
398 reduce or terminate an award of alimony upon specific written
399 findings by the court that since the granting of a divorce and
400 the award of alimony, a supportive relationship has existed
401 between the obligee and another a person, except upon a showing
402 by clear and convincing evidence by the obligee that his or her
403 long-term need for alimony, taking into account the totality of
404 the circumstances, has not been reduced by the supportive
405 relationship with whom the obligee resides. On the issue of
406 whether alimony should be reduced or terminated under this
407 paragraph, the burden is on the obligor to prove by a



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408 preponderance of the evidence that a supportive relationship
409 exists.

410 ~~3.2.~~ In determining whether an existing award of alimony
411 should be reduced or terminated because of an alleged supportive
412 relationship between an obligee and a person who is not related
413 by consanguinity or affinity and with whom the obligee resides,
414 the court shall elicit the nature and extent of the relationship
415 in question. The court shall give consideration, without
416 limitation, to circumstances, including, but not limited to, the
417 following, in determining the relationship of an obligee to
418 another person:

419 a. The extent to which the obligee and the other person
420 have held themselves out as a married couple by engaging in
421 conduct such as using the same last name, using a common mailing
422 address, referring to each other in terms such as "my husband"
423 or "my wife," or otherwise conducting themselves in a manner
424 that evidences a permanent supportive relationship.

425 b. The period of time that the obligee has resided with
426 the other person in a permanent place of abode.

427 c. The extent to which the obligee and the other person
428 have pooled their assets or income or otherwise exhibited
429 financial interdependence.

430 d. The extent to which the obligee or the other person has
431 supported the other, in whole or in part.

432 e. The extent to which the obligee or the other person has
433 performed valuable services for the other.

434 f. The extent to which the obligee or the other person has
435 performed valuable services for the other's company or employer.



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436 g. Whether the obligee and the other person have worked
437 together to create or enhance anything of value.

438 h. Whether the obligee and the other person have jointly
439 contributed to the purchase of any real or personal property.

440 i. Evidence in support of a claim that the obligee and the
441 other person have an express agreement regarding property
442 sharing or support.

443 j. Evidence in support of a claim that the obligee and the
444 other person have an implied agreement regarding property
445 sharing or support.

446 k. Whether the obligee and the other person have provided
447 support to the children of one another, regardless of any legal
448 duty to do so.

449 ~~4.3.~~ This paragraph does not abrogate the requirement that
450 every marriage in this state be solemnized under a license, does
451 not recognize a common law marriage as valid, and does not
452 recognize a de facto marriage. This paragraph recognizes only
453 that relationships do exist that provide economic support
454 equivalent to a marriage and that alimony terminable on
455 remarriage may be reduced or terminated upon the establishment
456 of equivalent equitable circumstances as described in this
457 paragraph. The existence of a conjugal relationship, though it
458 may be relevant to the nature and extent of the relationship, is
459 not necessary for the application of the provisions of this
460 paragraph.

461 5. There is a rebuttable presumption that any modification
462 or termination of an alimony award is retroactive to the date of
463 the filing of the petition. In an action under this section, if



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464 it is determined that the obligee unnecessarily or unreasonably
465 litigated the underlying petition for modification or
466 termination, the court may award the obligor his or her
467 reasonable attorney fees and costs pursuant to s. 61.16 and
468 applicable case law.

469 (c) For each support order reviewed by the department as
470 required by s. 409.2564(11), if the amount of the child support
471 award under the order differs by at least 10 percent but not
472 less than \$25 from the amount that would be awarded under s.
473 61.30, the department shall seek to have the order modified and
474 any modification shall be made without a requirement for proof
475 or showing of a change in circumstances.

476 (d) The department may ~~shall have authority to~~ adopt rules
477 to administer ~~implement~~ this section.

478 (11)

479 (c) If the court orders alimony payable concurrent with a
480 child support order, the alimony award may not be modified
481 solely because of a later reduction or termination of child
482 support payments, unless the court finds the obligor has the
483 ability to pay the modified alimony award, the existing alimony
484 award as determined by the court at the time of dissolution is
485 insufficient to meet the needs of the obligee, and such need
486 continues to exist.

487 (12)(a) The fact that an obligor has reached a reasonable
488 retirement age for his or her profession, has retired, and has
489 no intent to return to work, or has reached the normal
490 retirement age for social security benefits, is considered a
491 substantial change in circumstances as a matter of law. An



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492 obligor who has reached the normal retirement age for social
493 security benefits shall be considered to have reached a
494 reasonable retirement age. With regard to an obligor who has
495 retired before the normal retirement age for social security
496 benefits, the court shall consider the following in determining
497 whether the obligor's retirement age is reasonable:

498 1. Age.

499 2. Health.

500 3. Type of work.

501 4. Normal retirement age for that type of work.

502 (b) In anticipation of retirement, the obligor may file a
503 petition for termination or modification of the alimony award
504 effective upon the earlier of the retirement date or the date
505 the obligor reaches the normal retirement age for social
506 security benefits. The court shall terminate the award or reduce
507 the award based on the circumstances of the parties after
508 retirement and based on the factors in s. 61.08, unless the
509 obligee proves by clear and convincing evidence that the need
510 for alimony at the present level continues to exist and that the
511 obligor's ability to pay has not been diminished.

512 Section 5. Section 61.19, Florida Statutes, is amended to
513 read:

514 61.19 Entry of judgment of dissolution of marriage; ~~7~~ delay
515 period; separate adjudication of issues.-

516 (1) A ~~Ne~~ final judgment of dissolution of marriage may not
517 be entered until at least 20 days have elapsed from the date of
518 filing the original petition for dissolution of marriage, ~~7~~ but
519 the court, on a showing that injustice would result from this



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520 delay, may enter a final judgment of dissolution of marriage at
521 an earlier date.

522 (2) (a) During the first 180 days after the date of service
523 of the original petition for dissolution of marriage, the court
524 may not grant a final dissolution of marriage with a reservation
525 of jurisdiction to subsequently determine all other substantive
526 issues unless the court makes written findings that there are
527 exceptional circumstances that make the use of this process
528 clearly necessary to protect the parties or their children and
529 that granting a final dissolution will not cause irreparable
530 harm to either party or the children. Before granting a final
531 dissolution of marriage with a reservation of jurisdiction to
532 subsequently determine all other substantive issues, the court
533 shall enter temporary orders necessary to protect the parties
534 and their children, which orders remain effective until all
535 other issues can be adjudicated by the court. The desire of one
536 party to remarry does not justify the use of this process.

537 (b) If more than 180 days have elapsed after the date of
538 service of the original petition for dissolution of marriage,
539 the court may grant a final dissolution of marriage with a
540 reservation of jurisdiction to subsequently determine all other
541 substantive issues only if the court enters temporary orders
542 necessary to protect the parties and their children, which
543 orders remain effective until such time as all other issues can
544 be adjudicated by the court, and makes a written finding that no
545 irreparable harm will result from granting a final dissolution.

546 (c) If more than 365 days have elapsed after the date of
547 service of the original petition for dissolution of marriage,



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548 absent a showing by either party that irreparable harm will
549 result from granting a final dissolution, the court shall, upon
550 request of either party, immediately grant a final dissolution
551 of marriage with a reservation of jurisdiction to subsequently
552 determine all other substantive issues. Before granting a final
553 dissolution of marriage with a reservation of jurisdiction to
554 subsequently determine all other substantive issues, the court
555 shall enter temporary orders necessary to protect the parties
556 and their children, which orders remain effective until all
557 other issues can be adjudicated by the court.

558 (d) The temporary orders necessary to protect the parties
559 and their children entered before granting a dissolution of
560 marriage without an adjudication of all substantive issues may
561 include, but are not limited to, temporary orders that:

- 562 1. Restrict the sale or disposition of property.
- 563 2. Protect and preserve the marital assets.
- 564 3. Establish temporary support.
- 565 4. Provide for maintenance of health insurance.
- 566 5. Provide for maintenance of life insurance.

567 (e) The court is not required to enter temporary orders to
568 protect the parties and their children if the court enters a
569 final judgment of dissolution of marriage which adjudicates
570 substantially all of the substantive issues between the parties
571 but reserves jurisdiction to address ancillary issues such as
572 the entry of a qualified domestic relations order or the
573 adjudication of attorney fees and costs.

574 Section 6. (1) The amendments to chapter 61, Florida
575 Statutes, made by this act apply to all initial awards of, and



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576 agreements for, alimony entered before July 1, 2013, and to all
577 modifications of such awards or agreements made before July 1,
578 2013, with the exception of agreements that are expressly
579 nonmodifiable. Such amendments may serve as a basis to modify
580 the amount or duration of an award existing before July 1, 2013.
581 Such amendments may also serve as a basis to modify an agreement
582 for alimony if the agreement is 25 percent or more in duration
583 or amount than an alimony award calculated under the amendments
584 made by this act.

585 (2) An obligor whose initial award or modification of such
586 award was made before July 1, 2013, may file a modification
587 action according to the following schedule:

588 (a) An obligor who is subject to an alimony award of 15
589 years or more may file a modification action on or after July 1,
590 2013.

591 (b) An obligor who is subject to an alimony award of 8
592 years or more, but less than 15 years, may file a modification
593 action on or after July 1, 2014.

594 (c) An obligor who is subject to an alimony award of less
595 than 8 years may file a modification action on or after July 1,
596 2015.

597 (3) An obligor whose initial agreement or modification of
598 such agreement was made before July 1, 2013, may file a
599 modification action according to the following schedule:

600 (a) An obligor who has agreed to permanent alimony may
601 file a modification action on or after July 1, 2013.



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602 (b) An obligor who has agreed to durational alimony of 10
603 years or more may file a modification action on or after July 1,
604 2014.

605 (c) An obligor who has agreed to durational alimony of
606 more than 5 years but less than 10 years may file a modification
607 action on or after July 1, 2015.

608 Section 7. This act shall take effect July 1, 2013.

609

610

611

612

T I T L E A M E N D M E N T

613

Remove everything before the enacting clause and insert:

614

An act relating to dissolution of marriage; amending

615

s. 61.071, F.S.; requiring that alimony pendente lite

616

be calculated in accordance with s. 61.08, F.S.;

617

amending s. 61.08, F.S.; defining terms; revising

618

factors to be considered for alimony awards; requiring

619

a court to make written findings regarding the basis

620

for awarding a combination of forms of alimony,

621

including the type of alimony and length of time for

622

which it is awarded; revising factors to be considered

623

when deciding whether to award alimony; providing that

624

an award of alimony granted automatically terminates

625

without further action under certain circumstances;

626

providing that the party seeking alimony has the

627

burden of proof of demonstrating a need for alimony

628

and that the other party has the ability to pay

629

alimony; requiring the court to consider specified



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630 relevant factors when determining the proper type and
631 amount of alimony; revising provisions relating to the
632 protection of awards of alimony; revising provisions
633 for an award of durational alimony; specifying
634 criteria related to the rebuttable presumption to
635 award or not to award alimony; deleting a provision
636 authorizing permanent alimony; requiring written
637 findings regarding the incomes and standard of living
638 of the parties after dissolution of marriage; amending
639 s. 61.09, F.S.; providing for the calculation of
640 alimony; amending s. 61.14, F.S.; authorizing a party
641 to apply for an order to terminate the amount of
642 support, maintenance, or alimony; requiring that an
643 alimony order be modified upward upon a showing by
644 clear and convincing evidence of an increased ability
645 to pay alimony by the other party; prohibiting an
646 increase in an obligor's income from being considered
647 permanent in nature until it has been maintained for a
648 specified period without interruption; providing an
649 exemption from the reduction or termination of an
650 alimony award in certain circumstances; providing that
651 there is a rebuttable presumption that any
652 modification or termination of an alimony award is
653 retroactive to the date of the filing of the petition;
654 providing for an award of attorney fees and costs if
655 it is determined that an obligee unnecessarily or
656 unreasonably litigates a petition for modification or
657 termination of an alimony award; revising provisions



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658 relating to the effect of a supportive relationship on
659 an award of alimony; providing that income and assets
660 of the obligor's spouse or the person with whom the
661 obligor resides may not be considered in the
662 redetermination in a modification action; prohibiting
663 an alimony award from being modified providing that if
664 the court orders alimony concurrent with a child
665 support order, the alimony award may not be modified
666 because of the later modification or termination of
667 child support payments; providing that the attaining
668 of retirement age is a substantial change in
669 circumstances; requiring the court to consider certain
670 factors in determining whether the obligor's
671 retirement is reasonable; requiring a court to
672 terminate or reduce an alimony award based on certain
673 factors; amending s. 61.19, F.S.; authorizing separate
674 adjudication of issues in a dissolution of marriage
675 case in certain circumstances; providing for
676 retroactive application of the act to alimony awards
677 entered before July 1, 2013; providing allowable dates
678 for the modification of such awards; providing an
679 effective date.



680

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 Real Property Liens and Conveyances

SPONSOR(S): Wood

TIED BILLS: None **IDEN./SIM. BILLS:** SB 404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Keegan 	Bond 
2) Local & Federal Affairs Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law requires that the form of a warranty deed conveying real property must include a blank space for the grantee's social security number. Writing the grantee's social security number on a warranty deed is not mandatory, and failure to do so will not affect the validity of the deed. This bill removes the requirement to include the space for a social security number on a warranty deed.

The term "lien" refers to the legal right to foreclose against property if the underlying debt is unpaid. In general, a lienholder's priority as against other lienholders is determined by the date when the lienholder recorded the lien in the Official Records of the county. However, some liens may affect the title to real property even though unrecorded, which becomes problematic when such lien is not easily discoverable like those in the Official Records. This bill requires that a lien against real property must be recorded in the Official Records in order to be valid. This bill only applies to liens entered by a governmental or quasi-governmental entity for services, fines or penalties. However, a lien for taxes, non-ad valorem or special assessments, or utilities is not affected by this bill.

This bill does not appear to have a fiscal impact on state government. This bill may have a minimal negative fiscal impact on a local government that elects to pay the cost of recording previously unrecorded liens.

This bill has an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Statutory Warranty Deed Form

A warranty deed memorializes the transfer of real property.¹ Common law provides that a warranty deed must include several promises that are considered binding on the parties, regardless of whether the promises are expressly listed in the deed.² Current law provides a statutory form of a warranty deed, however, the statutory form is not required for the deed to be valid.³ If the form of a warranty deed substantially conforms to the statutory form, the deed will convey real property along with all of the common law promises.⁴

The statutory warranty deed form includes a blank space for the social security number of the individual or individuals acquiring the real property (known as a "grantee").⁵ This requirement was originally added to the warranty deed form in 1988.⁶ There is no penalty for failing to include a grantee's social security number on a warranty deed,⁷ and it is commonly omitted.

The blank space requirement was created as part of an act for alimony and child support reform.⁸ The apparent purpose of this blank space was to allow more effective recordkeeping of real property for the purpose of collecting overdue child support.⁹ However, because there is no indexing system utilizing the social security number, the requirement does not serve this purpose. There is no other apparent use for the social security number on a deed.

This bill removes the requirement from the statutory warranty deed to include a blank space for the grantee's social security number.

Lien Recording Requirements

A lien is a form of security interest to ensure payment of a debt or other obligation.¹⁰ In general, a lien or other encumbrance against real property is legally binding against the owner of the real property from the time the lien is created.¹¹ However, a lien is generally not effective against the rights of another lienholder unless that lienholder has notice of the lien.¹² A lienholder may comply with the notice requirement by recording the lien in the Official Records, which are retained by the clerk of court in the county where the property is located.¹³ The law recognizes the date a lien is recorded in the Official Records as the presumptive date the lien becomes effective against other parties.¹⁴

¹ Section 689.03, F.S.

² 19 FLA. PRAC. SERIES, §3:8 (2012-2013 ed.).

³ Section 689.03, F.S.; 19 FLA. PRAC. SERIES, §3:8 (2012-2013 ed.).

⁴ *Id.*

⁵ Section 689.02(2), F.S.

⁶ S.B. 487, 1987-1988 Reg. Sess. (Fla. 1988).

⁷ Section 689.02(2), F.S.

⁸ Chapter 88-175, 1988 L. O. F.

⁹ Fla. Dept. of Revenue, Office of Child Support Enforcement, 1988 HRS Legislative Proposal (1988) (on file with the State Archives of Florida.)

¹⁰ 19 FLA. PRAC. SERIES, *Florida Real Estate* § 37:1 (2012-2013 ed.)

¹¹ *Id.*

¹² *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796, 799 (Fla. 5th DCA 2010)

¹³ *City of Palm Bay v. Wells Fargo Bank*, 57 So.3d 226 (Fla. 5th DCA 2011); *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796, 799 (Fla. 5th DCA 2010); s. 695.11, F.S.; s. 28.222, F.S.

¹⁴ *City of Palm Bay v. Wells Fargo Bank*, 57 So.3d 226 (Fla. 5th DCA 2011); *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796, 799 (Fla. 5th DCA 2010); s. 695.11, F.S.; s. 28.222, F.S.

There is a class of liens commonly referred to as “hidden liens,” which are not recorded in the Official Records.¹⁵ A lienholder of a hidden lien may create the lien without recording such lien in the Official Records. Courts have upheld hidden liens in various circumstances.¹⁶ When such a lien is not recorded in the Official Records, a general title search or a public records search will not reveal that the lien is attached to the title of the property.

This bill requires governmental and quasi-governmental entities to record a lien in the Official Records in order for the lien to be effective, thereby limiting those entities from utilizing hidden liens. This bill only applies to governmental or quasi-governmental liens for services, fines, or penalties, and does not apply to liens for taxes, non-ad valorem or special assessments, or utilities. A properly recorded lien must include the property owner’s name, a property description or address, and the tax or parcel identification number.

Note that removal of lien rights does not affect liability for the underlying debt. That is, where a hidden lien is prohibited and the entity elects not to record a lien, the underlying debt is still owed and remains collectible. In practice, however, a debt without a lien is considered harder to collect.

B. SECTION DIRECTORY:

Section 1 amends s. 689.02(2), F.S., regarding the statutory warranty deed form.

Section 2 amends s. 695.01, F.S., regarding lien recording.

Section 3 provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill may have an unknown impact on local government revenues. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

¹⁵ Wanda Borges, *Hidden Liens: Who is Entitled to What?*, 103 Com. L.J. 284, 285 (1998).

¹⁶ *Dade County v. Certain Lands*, 247 So.2d 787, 789 (Fla. 3rd DCA 1971).

D. FISCAL COMMENTS:

This bill is likely to have a positive but unknown fiscal impact on the private sector. It appears that this bill will lower transaction costs and limit unknown liabilities of transfer agents and purchasers of real property.

It is unknown how many local governments have created ordinances creating a hidden lien. Local governments will be able to elect one of three apparent means by which to respond to this bill, with the following fiscal impacts:

- A local government may elect to record previously unrecorded liens. Most liens only require a single page, which has a recording cost payable to the clerk of court or county recorder of \$10.00.¹⁷ The cost to such a local government would be these recording costs.
- A local government may elect to record previously unrecorded liens after amending the relevant ordinance to add the recording cost to the amount of the outstanding lien. In such case, this bill would have little to no fiscal impact on that local government.
- A local government may elect to forgo recording of liens and attempt to collect such monies without utilizing liens. In such case, the local government would save on recording costs but may see a decline in the collections rate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require municipalities or counties to expend funds, reduce their authority over raising revenues in the aggregate, or reduce the percentage of a shared state tax.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 2002, the Office of Statewide Prosecution issued an interim report from the Sixteenth Statewide Grand Jury on identity theft in Florida. The report implies that social security number requirements facilitate identity theft. Reforms were passed in 2002 in reaction to this report, including an amendment to s. 119.0714, F.S., to prohibit including social security numbers on official records unless expressly required by law.

The Florida Department of Revenue (DOR) neither receives nor uses the social security numbers on deeds for the purpose of collecting child support or alimony. DOR has indicated that it does not foresee any problem with eliminating a blank space for a social security number on warranty deeds.¹⁸

¹⁷ FLORIDA COURT CLERKS & COMPTROLLERS, DISTRIBUTION SCHEDULE 73 (2012), available at http://www.flclerks.com/public_info.html (last viewed Feb. 11, 2013).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

¹⁸ Legislative and Cabinet Services, Florida Department of Revenue, *Written Communication* (2012) (on file with the Civil Justice Subcommittee, Florida House of Representatives).

1 A bill to be entitled
 2 An act relating to real property liens and
 3 conveyances; amending s. 689.02, F.S.; deleting a
 4 requirement that blank spaces be included on a
 5 warranty deed to allow for entry of social security
 6 numbers of grantees on the deed; conforming
 7 provisions; amending s. 695.01, F.S.; providing that
 8 certain types of governmental or quasi-governmental
 9 liens on real property are valid and effectual against
 10 certain creditors and purchasers only if recorded in a
 11 specified manner; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (2) of section 689.02, Florida
 16 Statutes, is amended to read:

17 689.02 Form of warranty deed prescribed.—

18 (2) The form for warranty deeds of conveyance to land
 19 shall include a blank space for the property appraiser's parcel
 20 identification number describing the property conveyed, which
 21 number, if available, shall be entered on the deed before it is
 22 presented for recording, ~~and blank spaces for the social~~
 23 ~~security numbers of the grantees named in the deed, if~~
 24 ~~available, which numbers may be entered on the deed before it is~~
 25 ~~presented for recording.~~ The failure to include such blank space
 26 ~~spaces,~~ or the parcel identification number, ~~or any social~~
 27 ~~security number,~~ or the inclusion of an incorrect parcel
 28 identification number ~~or social security number,~~ does shall not

29 affect the validity of the conveyance or the recordability of
 30 the deed. Such parcel identification number is ~~shall~~ not
 31 ~~constitute~~ a part of the legal description of the property
 32 otherwise set forth in the deed and may ~~shall~~ not be used as a
 33 substitute for the legal description of the property being
 34 conveyed, ~~nor shall a social security number serve as a~~
 35 ~~designation of the grantee named in the deed.~~

36 Section 2. Subsection (3) is added to section 695.01,
 37 Florida Statutes, to read:

38 695.01 Conveyances and liens to be recorded.—

39 (3) A lien by a governmental entity or quasi-governmental
 40 entity that attaches to real property for an improvement,
 41 service, fine, or penalty, other than a lien for taxes, non-ad
 42 valorem or special assessments, or utilities, is valid and
 43 effectual against creditors and subsequent purchasers for a
 44 valuable consideration only if the lien is recorded in the
 45 official records of the county in which the property is located.
 46 The recorded notice of lien must contain the name of the owner
 47 of record, a description or address of the property, and the tax
 48 or parcel identification number applicable to the property as of
 49 the date of recording.

50 Section 3. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Worthless Checks, Drafts, or Orders of Payment
SPONSOR(S): Magar
TIED BILLS: None **IDEN./SIM. BILLS:** SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>JMC</i>	Bond <i>MB</i>
2) Business & Professional Regulation Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Before the recipient of a worthless check, draft or order of payment (hereinafter, "bad check") may sue the maker, the recipient must send a letter giving the maker 30 days to pay the check plus the statutory fee. If unpaid after 30 days, the recipient may sue for 3 times the amount of the check plus fees, costs and attorney fees.

This bill provides to a payee an alternative notice method that would allow the recipient of the bad check to proceed with a suit without providing the demand letter.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

While the Florida Rules of Civil Procedure, as promulgated by the Florida Supreme Court, generally dictate the steps that litigants must follow in civil and criminal actions, the Legislature may pass substantive laws that a litigant must follow before getting into court. One such law requires a recipient (payee) of a check, draft, or order to send a demand letter and wait 30 days before filing suit against the maker of an instrument that is either refused by the drawee for lack of funds, credit or account, or which was made with the intent to defraud (hereinafter "bad check"). The state attorney may also prosecute under s. 832.07, F.S.¹

The payee may also assess a service charge to the maker or drawer of the bad check.² The service charge is the greater of 5% of the face value of the bad check or \$25 for a bad check with a face value of \$50 or less, \$30 for a bad check with a face value greater than \$50 but not exceeding \$300, or \$40 for a bad check with a face value exceeding \$300.³ The maker or drawer is also liable for interest and bank fees.⁴

Prior to filing a lawsuit, current law requires the payee to provide the maker or drawer an opportunity to cure. The payee must send the maker or drawer a demand of payment by certified or registered mail or by first-class mail if the payee provides an affidavit of service. In order to avoid the suit, upon receipt of the demand letter the maker or drawer must, within 30 days, pay to the payee the full amount of the bad check and the service charge described above.⁵

If the maker or drawer does not tender the face value of the bad check plus the service charge to the payee within 30 days, the payee may file suit. The maker or drawer has another opportunity to avoid a judgment by tendering payment to the payee prior to the hearing equal to the sum of the face value of the bad check plus the service charge described above, court costs, incurred bank fees, attorney fees and collection costs.⁶ If the suit goes to judgment, the court may award that sum plus three-times the face value of the bad check.⁷

Effect of the Bill

The bill provides an alternative to the payee to allow recovery without sending a demand letter by posting notice at the point of sale or printing notice on an invoice sent before payment that warns the maker or drafter that if the check or debit card transaction is returned by the bank for insufficient funds, the payee may collect the amount of the bad check plus the service charge. The notice reads:

If your check or debit card transaction is returned by your bank for insufficient funds, you authorize the collection of the amount of the check, as well as a return fee as provided in section 832.08(5), Florida Statutes.

There are drafting issues in this bill that may affect the apparent intent of this bill. See the Drafting Issues section below.

¹ Section 68.065(1), F.S.

² Section 68.065(2), F.S.

³ Section 832.08(5), F.S.

⁴ Section 68.065(2), F.S.

⁵ Section 68.065(3), F.S.

⁶ Section 68.065(5), F.S.

⁷ Section 68.065(1), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 68.065, F.S., relating to actions to collect worthless checks, drafts, or orders of payment.

Section 2 provides an effective date of July 1, 2013.

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:

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

D. FISCAL COMMENTS:

None.

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:

The bill creates an alternative notice to the demand letter, but does not eliminate the requirement for the demand letter in subsection (1) of s. 68.065, F.S. The bill also retains current language that could limit recovery under the alternative notice method. There is a risk to payees that may choose to utilize the alternative notice method that a court may reject any filing that does not include either a return receipt or an affidavit that shows evidence that a demand letter was sent to the maker or drawer.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to worthless checks, drafts, or orders
 3 of payment; amending s. 68.065, F.S.; permitting
 4 recovery of worthless checks, drafts, or orders of
 5 payment without the sending of a specified written
 6 demand if the payee has a specified notice posted at
 7 the point of sale or on an invoice; providing an
 8 effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12 Section 1. Section 68.065, Florida Statutes, is amended to
 13 read:

14 68.065 Actions to collect worthless checks, drafts, or
 15 orders of payment; attorney ~~attorney's~~ fees and collection
 16 costs.-

17 (1) In any civil action brought for the purpose of
 18 collecting a check, draft, or order of payment, the payment of
 19 which was refused by the drawee because of the lack of funds,
 20 credit, or an account, or where the maker or drawer stops
 21 payment on the check, draft, or order of payment with intent to
 22 defraud, and where the maker or drawer fails to pay the amount
 23 owing, in cash, to the payee within 30 days following a written
 24 demand therefor, as provided in subsection (3), the maker or
 25 drawer shall be liable to the payee, in addition to the amount
 26 owing upon such check, draft, or order, for damages of triple
 27 the amount so owing. However, in no case shall the liability for
 28 damages be less than \$50. The maker or drawer shall also be

29 | liable for any court costs and reasonable attorney fees incurred
 30 | by the payee in taking the action. Criminal sanctions, as
 31 | provided in s. 832.07, may be applicable.

32 | (2) The payee may also charge the maker or drawer of the
 33 | check, draft, or order of payment a service charge not to exceed
 34 | the service fees authorized under s. 832.08(5) or 5 percent of
 35 | the face amount of the instrument, whichever is greater, when
 36 | making written demand for payment. In the event that a judgment
 37 | or decree is rendered, interest at the rate and in the manner
 38 | described in s. 55.03 may be added toward the total amount due.
 39 | Any bank fees incurred by the payee may be charged to the maker
 40 | or drawer of the check, draft, or order of payment.

41 | (3) Before recovery under this section may be claimed,
 42 | either:

43 | (a) A written demand must be delivered by certified or
 44 | registered mail, evidenced by return receipt, or by first-class
 45 | mail, evidenced by an affidavit of service of mail, to the maker
 46 | or drawer of the check, draft, or order of payment to the
 47 | address on the check or other instrument, to the address given
 48 | by the drawer at the time the instrument was issued, or to the
 49 | drawer's last known address. The form of such notice shall be
 50 | substantially as follows:

51 | "You are hereby notified that a check numbered in the
 52 | face amount of \$.... issued by you on ...(date)..., drawn upon
 53 | ...(name of bank)..., and payable to, has been dishonored.
 54 | Pursuant to Florida law, you have 30 days from receipt of this
 55 | notice to tender payment in cash of the full amount of the
 56 | check, plus a service charge of \$25~~7~~ if the face value does not

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2013

57 exceed \$50, ~~\$30~~ if the face value exceeds \$50 but does not
 58 exceed \$300, ~~\$40~~ if the face value exceeds \$300, or 5 percent
 59 of the face amount of the check, whichever is greater, the total
 60 amount due being \$.... and cents. Unless this amount is
 61 paid in full within the 30-day period, the holder of the check
 62 or instrument may file a civil action against you for three
 63 times the amount of the check, but in no case less than \$50, in
 64 addition to the payment of the check plus any court costs,
 65 reasonable attorney fees, and any bank fees incurred by the
 66 payee in taking the action-"; or

67 (b) The payee must have posted at the point of sale or
 68 have printed on an invoice sent before payment for goods or
 69 services a notice in substantially the following form:

71 "If your check or debit card transaction is returned by
 72 your bank for insufficient funds, you authorize the
 73 collection of the amount of the check, as well as a return
 74 fee as provided in section 832.08(5), Florida Statutes."

75
 76 (4) A subsequent person receiving a check, draft, or
 77 order~~,~~ from the original payee or a successor endorsee has the
 78 same rights that the original payee has against the maker of the
 79 instrument, provided such subsequent person gives notice in a
 80 substantially similar form to that provided in subsection (3)
 81 ~~above~~. A subsequent person providing such notice shall be immune
 82 from civil liability for the giving of such notice and for
 83 proceeding under the forms of such notice, so long as the maker
 84 of the instrument has the same defenses against the subsequent

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2013

85 | person as against the original payee. However, the remedies
 86 | available under this section may be exercised only by one party
 87 | in interest.

88 | (5) After ~~Subsequent~~ to the commencement of the action but
 89 | before ~~prior~~ to the hearing, the maker or drawer may tender to
 90 | the payee, as satisfaction of the claim, an amount of money
 91 | equal to the sum of the check, the service charge, court costs,
 92 | and incurred bank fees. Other provisions notwithstanding, the
 93 | maker or drawer is liable to the payee for all attorney fees and
 94 | collection costs incurred by payee as a result of the payee's
 95 | claim.

96 | (6) If the court or jury determines that the failure of
 97 | the maker or drawer to satisfy the dishonored check was due to
 98 | economic hardship, the court or jury has the discretion to waive
 99 | all or part of the statutory damages.

100 | Section 2. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Magar offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:
Section 1. Section 68.065, Florida Statutes, is amended to
read:

68.065 Actions to collect worthless checks, drafts, ~~or~~
orders of payment, debit card orders, or electronic funds
transfers; attorney ~~attorney's~~ fees and collection costs.-

(1) The payee of any check, draft, order of payment, debit
card order, or electronic funds transfer of which was refused by
the drawee because of the lack of funds, credit, or an account,
or where the maker or drawer stops payment on the check, draft,
order of payment, debit card order, or electronic funds transfer
with intent to defraud, may lawfully collect bank fees actually
incurred by the payee in the course of tendering the payment,
plus a service charge of \$25, if the face value does not exceed
\$50, \$30, if the face value exceeds \$50 but does not exceed
\$300, \$40, if the face value exceeds \$300, or 5 percent of the



Amendment No. 1

21 face amount of the check, draft, order of payment, debit card
22 order, or electronic funds transfer, whichever is greater. The
23 right to damages under this subsection may be claimed without
24 the filing of a civil action. This service charge is not in
25 addition to any right to a service charge pursuant to subsection
26 (2), s. 832.062(4)(a), or s. 832.07.

27 (2)(1) In any civil action brought for the purpose of
28 collecting a check, draft, ~~or~~ order of payment, debit card
29 order, or electronic funds transfer, the payment of which was
30 refused by the drawee because of the lack of funds, credit, or
31 an account, or where the maker or drawer stops payment on the
32 check, draft, or order of payment with intent to defraud, and
33 where the maker or drawer fails to pay the amount owing, in
34 cash, to the payee within 30 days following a written demand
35 therefor, if required by ~~as provided in~~ subsection (4)(3), the
36 maker or drawer shall be liable to the payee, in addition to the
37 amount owing upon such check, draft, ~~or~~ order of payment, debit
38 card order, or electronic funds transfer, for damages of triple
39 the amount so owing. However, in no case shall the liability for
40 damages be less than \$50. The maker or drawer shall also be
41 liable for any court costs and reasonable attorney fees incurred
42 by the payee in taking the action. Criminal sanctions, as
43 provided in s. 832.07, may be applicable.

44 (3)(2) The payee may also charge the maker or drawer of
45 the check, draft, or order of payment a service charge not to
46 exceed the service fees authorized under s. 832.08(5) or 5
47 percent of the face amount of the instrument, whichever is
48 greater, when making written demand for payment. In the event



Amendment No. 1

49 that a judgment or decree is rendered, interest at the rate and
50 in the manner described in s. 55.03 may be added toward the
51 total amount due. Any bank fees incurred by the payee may be
52 charged to the maker or drawer of the check, draft, ~~or~~ order of
53 payment, debit card order, or electronic funds transfer.

54 ~~(4)~~(3) Before recovery under this section may be claimed,
55 a written demand must be delivered by certified or registered
56 mail, evidenced by return receipt, or by first-class mail,
57 evidenced by an affidavit of service of mail, to the maker or
58 drawer of the check, draft, ~~or~~ order of payment, debit card
59 order, or electronic funds transfer to the address on the check
60 or other instrument, to the address given by the drawer at the
61 time the instrument was issued, or to the drawer's last known
62 address. The form of such notice shall be substantially as
63 follows:

64 "You are hereby notified that a check numbered in the
65 face amount of \$.... issued by you on ...(date)..., drawn upon
66 ...(name of bank)..., and payable to, has been dishonored.
67 Pursuant to Florida law, you have 30 days from receipt of this
68 notice to tender payment in cash of the full amount of the check
69 plus a service charge of \$25, if the face value does not exceed
70 \$50, \$30, if the face value exceeds \$50 but does not exceed
71 \$300, \$40, if the face value exceeds \$300, or 5 percent of the
72 face amount of the check, whichever is greater, the total amount
73 due being \$.... and cents. Unless this amount is paid in
74 full within the 30-day period, the holder of the check or
75 instrument may file a civil action against you for three times
76 the amount of the check, but in no case less than \$50, in



Amendment No. 1

77 addition to the payment of the check plus any court costs,
78 reasonable attorney fees, and any bank fees incurred by the
79 payee in taking the action."

80 ~~(5)(4)~~ A subsequent person receiving a check, draft, ~~or~~
81 order of payment, debit card order, or electronic funds
82 transfer, from the original payee or a successor endorsee has
83 the same rights that the original payee has against the maker of
84 the instrument, provided such subsequent person gives notice in
85 a substantially similar form to that provided above. A
86 subsequent person providing such notice shall be immune from
87 civil liability for the giving of such notice and for proceeding
88 under the forms of such notice, so long as the maker of the
89 instrument has the same defenses against the subsequent person
90 as against the original payee. However, the remedies available
91 under this section may be exercised only by one party in
92 interest.

93 ~~(6)(5)~~ Subsequent to the commencement of the action but
94 prior to the hearing, the maker or drawer may tender to the
95 payee, as satisfaction of the claim, an amount of money equal to
96 the sum of the check or other instrument, the service charge,
97 court costs, and incurred bank fees. Other provisions
98 notwithstanding, the maker or drawer is liable to the payee for
99 all attorney fees and collection costs incurred by payee as a
100 result of the payee's claim.

101 ~~(7)(6)~~ If the court or jury determines that the failure of
102 the maker or drawer to satisfy the dishonored check or other
103 instrument was due to economic hardship, the court or jury has
104 the discretion to waive all or part of the statutory damages.



Amendment No. 1

105 Section 2. This act shall take effect July 1, 2013.

106

107

108

109

T I T L E A M E N D M E N T

110

Remove everything before the enacting clause and insert:

111

An act relating to worthless checks, drafts, orders of payment,

112

debit card orders, or electronic funds transfers; amending s.

113

68.065, F.S.; permitting recovery of bank fees and a service

114

charge related to worthless checks, drafts, or orders of payment

115

without the sending of a specified written demand or the filing

116

of a civil action; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJS 13-02 Expert Testimony
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary JMC	Bond VIB

SUMMARY ANALYSIS

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 or not 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 or not 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 does not appear to have a fiscal impact on state or local government.

This bill contains an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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

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 US. 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).

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 testimony on fibromyalgia.¹⁰ The court held that the testimony should have come in under pure opinion testimony¹¹ 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 requires the courts of this state to interpret and apply the above requirements and s. 90.704, F.S., in accordance with *Daubert v. Merrel Dow Pharmaceuticals, Inc.*, and subsequent U.S. Supreme Court cases that reaffirm expert witness testimony under the *Daubert* standard. The *Daubert* standard laid out in the bill will also apply to all proposed expert testimony, including pure opinion testimony as discussed in *Marsh v. Valyou*. The bill also provides that *Frye v. United States* and subsequent Florida decisions applying and implementing *Frye* no longer apply to s. 90.702, F.S., or s. 90.704, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 90.702, F.S., regarding testimony by experts.

Section 2 amends s. 90.704, F.S., regarding the basis of opinion testimony by experts.

Section 3 provides an effective date of July 1, 2013.

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, but it is difficult to estimate due to the unavailability of data needed to quantify any increase or decrease in judicial workload.

⁹ *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007).

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 February 7, 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.

In criminal proceedings, the state may incur costs, and it is difficult to affirmatively quantify, 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.

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.

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:

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S. (the Evidence Code), and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.¹³

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.

¹³ See, e.g., *In re Florida Evidence Code*, 782 So.2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court); compare *In re Florida Evidence Code*, 372 So.2d 1369 (Fla. 1979) (Florida Supreme Court adopting Florida Evidence Code to the extent it is procedural), clarified, *In re Florida Evidence Code*, 376 So.2d 1161 (Fla. 1979).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to expert testimony; amending s.
 3 90.702, F.S.; providing that a witness qualified as an
 4 expert by knowledge, skill, experience, training, or
 5 education may testify in the form of an opinion as to
 6 the facts at issue in a case under certain
 7 circumstances; requiring the courts of this state to
 8 interpret and apply the principles of expert testimony
 9 in conformity with specified United States Supreme
 10 Court decisions; subjecting pure opinion testimony to
 11 such requirements; amending s. 90.704, F.S.; providing
 12 that facts or data that are otherwise inadmissible in
 13 evidence may not be disclosed to the jury by the
 14 proponent of the opinion or inference unless the court
 15 determines that the probative value of the facts or
 16 data in assisting the jury to evaluate the expert's
 17 opinion substantially outweighs the prejudicial effect
 18 of the facts or data; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 90.702, Florida Statutes, is amended to
 23 read:

24 90.702 Testimony by experts.—

25 (1) If scientific, technical, or other specialized
 26 knowledge will assist the trier of fact in understanding the
 27 evidence or in determining a fact in issue, a witness qualified
 28 as an expert by knowledge, skill, experience, training, or

29 education may testify about it in the form of an opinion or
 30 otherwise, if:

31 (a) The testimony is based upon sufficient facts or data;

32 (b) The testimony is the product of reliable principles
 33 and methods; and

34 (c) The witness has applied the principles and methods
 35 reliably to the facts of the case; however, the opinion is
 36 admissible only if it can be applied to evidence at trial.

37 (2) The courts of this state shall interpret and apply the
 38 requirements of subsection (1) and s. 90.704 in accordance with
 39 Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579
 40 (1993); General Electric Co. v. Joiner, 522 U.S. 136 (1997); and
 41 Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999). Frye v.
 42 United States, 293 F. 1013 (D.C. Cir. 1923) and subsequent
 43 Florida decisions applying or implementing Frye no longer apply
 44 to subsection (1) or s. 90.704. All proposed expert testimony,
 45 including pure opinion testimony as discussed in Marsh v.
 46 Valyou, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1)
 47 and s. 90.704.

48 Section 2. Section 90.704, Florida Statutes, is amended to
 49 read:

50 90.704 Basis of opinion testimony by experts.—The facts or
 51 data upon which an expert bases an opinion or inference may be
 52 those perceived by, or made known to, the expert at or before
 53 the trial. If the facts or data are of a type reasonably relied
 54 upon by experts in the subject to support the opinion expressed,
 55 the facts or data need not be admissible in evidence. Facts or
 56 data that are otherwise inadmissible shall not be disclosed to

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57 | the jury by the proponent of the opinion or inference unless the
 58 | court determines that their probative value in assisting the
 59 | jury to evaluate the expert's opinion substantially outweighs
 60 | their prejudicial effect.

61 | Section 3. This act shall take effect July 1, 2013.