

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 277 Alimony
SPONSOR(S): Civil Justice & Courts Policy Committee; Frishe
TIED BILLS: None IDEN./SIM. BILLS: SB 1194

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 10 Y, 0 N, As CS, DeZego, De La Paz.

SUMMARY ANALYSIS

Alimony is generally used to provide support to a financially dependent spouse. Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony in a dissolution of marriage case.

There are three basic types of alimony: permanent periodic, rehabilitative, and bridge-the-gap. Florida statutes expressly provide for permanent and rehabilitative alimony, and Florida courts have consistently recognized bridge-the-gap alimony.

The court has the discretion to modify alimony, giving due regard to the changed circumstances or the financial ability of the parties. In addition, a court may reduce or terminate alimony upon specific written findings that a supportive relationship exists between the receiving spouse and another person.

This bill makes changes to s. 61.08, F.S., regarding alimony and provides statutory guidelines for when and what type of alimony may be used in dissolution of marriage cases. Specifically, this bill adds two more types of alimony that a court may award to the statute: bridge-the-gap alimony, which is currently recognized in Florida case law although not in statute, and durational alimony, which has never been recognized in Florida.

This bill provides that all alimony awards, except for rehabilitative alimony, end upon the death of either party or the remarriage of the receiving spouse. In addition, this bill provides specifics regarding when each type of alimony may be modified or terminated.

This bill appears to have an indeterminate minimal fiscal impact on court revenues and expenditures.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Law

Alimony is generally used to provide support to a financially dependent spouse.<sup>1</sup> In Florida, the primary basis for determining alimony is whether there is need and ability to pay; 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.<sup>2</sup> Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.<sup>3</sup>

Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony in a dissolution of marriage case. These factors include:

- The standard of living established during the marriage;
- The duration of the marriage;
- The age, physical, and emotional condition of each party;
- The financial resources of each party, both marital and nonmarital, and the liabilities of each of them;
- If applicable, the time necessary for either party to acquire the education or training necessary for the party to find employment;
- Each party's contribution to the marriage, including, but not limited to, homemaking services, child care, education, and career building of the other party; and
- All sources of income available to either party.

In addition, the trial court is given broad discretion to consider any other factor necessary to do equity and justice between the parties.<sup>4</sup> A court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.<sup>5</sup>

There are three basic types of alimony: permanent periodic, rehabilitative, and bridge-the-gap. Florida statutes provide expressly for permanent and rehabilitative alimony,<sup>6</sup> and Florida courts have

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<sup>1</sup> Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78-OCT Fla. B. J. 71, 71 (2004).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Section 61.08(2), F.S.

<sup>5</sup> Section 61.08(1), F.S.

<sup>6</sup> *Id.*

recognized bridge-the-gap alimony in addition to these. The court may order periodic payments, lump sum payments or both for these types of alimony.

Section 61.14, F.S., provides that the court may modify an alimony award by increasing or decreasing the amount, giving due regard to the changed circumstances or the financial ability of the parties. In addition, the court "may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides." Section 61.14(1)(b)2., F.S., provides a non-exclusive list of circumstances for the court to consider when determining whether to modify an existing award of alimony based on a supportive relationship.

### *Permanent Periodic Alimony*

Permanent periodic alimony is usually awarded to meet the needs of a dependent spouse. In a long-term marriage, Florida courts have held that there is a presumption in favor of permanent alimony, regardless of the spouse's age or ability to earn income, although the district courts of Florida do not agree as to what constitutes a long-term marriage.<sup>7</sup> Generally, a marriage of seventeen years or longer is considered long-term.<sup>8</sup> A marriage which is neither short-term nor long-term falls in a middle "grey area," where there is neither a presumption for nor against permanent alimony.<sup>9</sup> In a short-term marriage, courts have generally found that there is a presumption against alimony.<sup>10</sup>

There are three prerequisites found in Florida case law for modification of permanent alimony: a substantial change in circumstances; the circumstance was not contemplated at the time of the final judgment of dissolution; and the circumstance is sufficient, material, involuntary and permanent in nature.<sup>11</sup> Permanent periodic alimony generally terminates on the death of either spouse or the remarriage of either recipient spouse, unless the parties agree otherwise.

### *Rehabilitative Alimony*

Rehabilitative alimony is used to establish self-support in the receiving spouse, either by redevelopment of previous skills, or by training necessary to develop new skills.<sup>12</sup> To receive an award of rehabilitative alimony, the party seeking support must provide the court with a rehabilitative plan including the purpose of the rehabilitation, the areas in which rehabilitation is needed, and the actual amount of money necessary for rehabilitation.<sup>13</sup>

A party seeking an extension of rehabilitative alimony must generally show that he or she has not been rehabilitated despite reasonable and diligent efforts.<sup>14</sup> However, an unanticipated change in circumstances has also been held to support a continuation of rehabilitative alimony.<sup>15</sup> Case law provides that rehabilitative alimony does not automatically terminate upon the remarriage of the recipient spouse; but, rather, the paying spouse must show a material and substantial change in circumstances.<sup>16</sup>

### *Bridge-the-gap Alimony*

Bridge-the-gap Alimony refers to awards of non-permanent alimony provided to ease the transition from married life to being single. This type of alimony is intended not to retrain or rehabilitate divorcing

<sup>7</sup> *Young v. Young*, 677 So. 2d 1301 (Fla. 5th DCA 1996).

<sup>8</sup> *Cruz v. Cruz*, 574 So. 2d 1117 (Fla. 3d DCA 1990).

<sup>9</sup> *Levy v. Levy*, 862 So. 2d 48 (Fla. 3d DCA 2003).

<sup>10</sup> *Reeves v. Reeves*, 821 So. 2d 333 (Fla. 5th DCA 2002).

<sup>11</sup> *Eisemann v. Eisemann*, 5 So. 3d 760 (Fla. 2d DCA 2009); *Damiano v. Damiano*, 855 So. 2d 708 (Fla. 4th DCA 2003).

<sup>12</sup> *Holmes v. Holmes*, 579 So. 2d 769 (Fla. 2d DCA 1991).

<sup>13</sup> *Id.*

<sup>14</sup> *Wilson v. Wilson*, 585 So. 2d 1179 (Fla. 5th DCA 1991).

<sup>15</sup> *Garramore v. Garramore*, 559 So. 2d 422 (Fla. 4th DCA 1990).

<sup>16</sup> *Owens v. Owens*, 559 So. 2d 321 (Fla. 1st DCA 1990).

spouses,<sup>17</sup> but rather, is intended only for short-term assistance with legitimate, identifiable short-term needs.<sup>18</sup> Bridge-the-gap alimony typically lasts no longer than two years.<sup>19</sup> This type of alimony is often payable as a lump sum in installments or as a single lump sum.

Although s. 61.14, F.S., provides that an alimony award may be modified giving due regard to a change in circumstances or financial ability, bridge-the-gap alimony is generally not subject to modification under current case law.

### Effect of Bill

This bill makes changes to s. 61.08, F.S., regarding alimony and provides statutory guidelines for when and what type of alimony may be used in dissolution of marriage cases. Specifically, this bill provides that before a court may make an award of any type of alimony, the court must first make a specific factual determination as to whether there is an actual need for alimony by either party and whether either party has the ability to pay. If the court finds that a party has a need and the other party has the ability to pay alimony or maintenance, then the court must consider all relevant factors, including those listed in s. 61.08(2), F.S. This bill broadens the list of factors to consider from all relevant "economic" factors to all relevant factors.

In addition, this bill adds the following to the current list of factors a court must consider in determining an award for alimony:

- The earning capacities, education levels, vocational skills, and employability of the parties;
- The responsibilities each party will have with regard to any minor children they have in common;
- The tax treatment and consequences to both parties of an alimony award, including designation of all or a portion of the payment as nontaxable, nondeductible income; and
- Any income available to either party through investments of any asset held by that party.

This bill provides that in addition to permanent or rehabilitative alimony, a court may also provide bridge-the-gap alimony, which is currently recognized in Florida case law, or durational alimony, which has never been used in Florida, or any combination of these forms.

### *Permanent Alimony*

This bill provides that permanent alimony may be awarded for the need and necessities of life as established during the marriage when a party lacks the financial ability to meet his or her needs and necessities of life. Permanent alimony may be awarded following a long-duration marriage, which is not defined within the statute but has typically been held as seventeen years or more; following a marriage of moderate duration, if it is appropriate based on the factors in s. 61.08(2), F.S.; or following a short-duration marriage if the circumstances are "exceptional."

An award of permanent alimony under this bill terminates upon the death of either party or the remarriage of the party receiving the award. An award may also be modified or terminated if there is a substantial change in circumstances or upon the existence of a supportive relationship as provided in s. 61.14, F.S., which is consistent with current law.

### *Rehabilitative Alimony*

Rehabilitative alimony may be awarded under this bill to assist a party in "establishing the capacity for self-support" by either redeveloping previous skills or credentials or acquiring additional education, training, or work experience. This bill requires that there must be a specific and defined rehabilitative plan which must be included as part of the order for rehabilitative alimony. This provision is consistent with current case law.

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<sup>17</sup> *Green v. Green*, 672 So. 2d 49 (Fla. 4th DCA 1996).

<sup>18</sup> *Borchard v. Borchard*, 730 So.2d 748, 753 (Fla. 2<sup>nd</sup> DCA 1999).

<sup>19</sup> *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2<sup>nd</sup> DCA 1999).

Rehabilitative alimony may be modified or terminated in accordance with s. 61.14, F.S.,<sup>20</sup> if there is a substantial change in circumstances, if the party does not comply with the plan, or when the plan is completed.

### *Bridge-the-gap Alimony*

This bill adds bridge-the-gap alimony as a type of alimony a judge may award under s. 61.08, F.S. Under this bill, bridge-the-gap alimony may be awarded to a party in order to provide support by allowing the party to make a transition from being married to being single. It is intended to assist a party with their short-term needs and the length of an award may not exceed two years duration.

This bill provides that bridge-the-gap alimony terminates on the death of either party or the remarriage of the party receiving the award. An award of bridge-the-gap alimony is not modifiable in amount or duration under this bill.

### *Durational Alimony*

This bill creates durational alimony, which has not been recognized in Florida statute or case law, and which may be provided when permanent periodic alimony is not appropriate. The purpose of durational alimony under this bill is to provide economic assistance for a set period of time following a short-duration or moderate-duration marriage. What constitutes short or moderate duration is not defined within the bill.

The award terminates upon the death of either party or the remarriage of the party receiving alimony and can be modified or terminated upon a substantial change of circumstances in accordance with s. 61.14, F.S. However, the length of durational alimony may not be modified under this bill, except under "exceptional circumstances."

This bill does not provide a specific length of time for durational alimony, so a court would have discretion to decide how long an award of durational alimony would last in each case. Durational alimony may provide recipient spouses, who would otherwise be denied alimony, an award of durational alimony.

## B. SECTION DIRECTORY:

Section 1 amends s. 61.08, F.S., relating to alimony.

Section 2 provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill appears to have a minimal indeterminate positive fiscal impact on court revenues resulting from a potential increase in alimony case filings, according to the Office of the State Courts Administrator.

#### 2. Expenditures:

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<sup>20</sup> Section 61.14, F.S., provides in part that a court may modify an award of alimony giving due regard to the change in circumstances or financial ability. In addition, the statute provides that court may reduce or terminate alimony upon specific written findings that a supportive relationship exists between the receiving spouse and another person.

This bill appears to have a minimal indeterminate negative fiscal impact on court expenditures due to an increase in the judicial workload, according to the Office of the State Courts Administrator.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill may provide an indeterminate positive fiscal impact to spouses who receive durational alimony who were previously not entitled to an award of alimony. This bill may also provide a corresponding negative fiscal impact to payor spouses.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On January 21, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to this bill. The amendment limited the length of an award of bridge-the-gap alimony to no more than two years duration.

The bill was then reported favorably. This analysis is drafted to the bill as amended.