

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SPB 7020

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: Ratification of a Department of Elder Affairs Rule

DATE: March 3, 2017

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Crosier	Hendon		<b>Pre-meeting</b>

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**I. Summary:**

SPB 7020 ratifies Rule 58M-2.009, F.A.C., adopted by the Department of Elder Affairs (department). The adopted rule establishes standards of practice to provide a level of accountability for professional guardians while avoiding the imposition of unnecessary regulations on the industry.

The Statement of Estimated Regulatory Costs (SERC) developed by the department determined that the proposed rule will likely increase regulatory costs by more than \$1 million in the aggregate over the next five years. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

This act takes effect upon becoming law.

**II. Present Situation:**

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.<sup>1</sup> Rulemaking authority is delegated by the Legislature to an agency in law, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.<sup>2</sup> An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.<sup>3</sup> The statutory

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<sup>1</sup> Section 120.52(16), F.S.

<sup>2</sup> Section 120.52(17), F.S.

<sup>3</sup> See ss. 120.52(8) and 120.536(1), F.S.

authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.<sup>4</sup>

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register (F.A.R.).<sup>5</sup> The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule;
- A summary of the agency's SERC, if one is prepared; and
- Whether legislative ratification is required.<sup>6</sup>

### **SERC Requirements**

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 in the aggregate within 1 year after implementation of the rule.<sup>7</sup>

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.<sup>8</sup>

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,<sup>9</sup> productivity, or innovation; or
- Regulatory costs, including any transactional costs.<sup>10,11</sup>

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<sup>4</sup> See *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla 1st DCA 2000).

<sup>5</sup> Section 120.54(3)(a)2., F.S.

<sup>6</sup> Section 120.54(3)(a)1., F.S.

<sup>7</sup> Sections 120.54(3)(b) and 120.541(1)(b), F.S.

<sup>8</sup> Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less. See ss. 120.52(18), (19), and 288.703(6), respectively.

<sup>9</sup> Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>10</sup> Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.

<sup>11</sup> Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.<sup>12</sup>

In 2016, the Legislature passed and the Governor signed CS/SB 232 by Senator Detert. The bill directed that the Statewide Public Guardianship Office be renamed the Office of Public and Professional Guardians. The department was directed to establish, by rule, standards of practice for professional guardians.

### III. Effect of Proposed Changes:

The proposed bill ratifies Rul 58M-2.009, F.A.C., Standards of Practice for Professional Guardians solely to meet the condition for effectiveness of the rule imposed by s. 120.541(3), F.S.

The proposed bill also:

- Directs that the act shall not be codified in the F.S.;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of requirements governing adoption of the rule.

The act is effective upon becoming a law. At that time, the rule becomes effective.<sup>13</sup>

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>12</sup> Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

<sup>13</sup> Section 120.54(3)(e)6., F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The proposed bill enables a rule to go into effect that would impose requirements on professional guardians. However, any additional costs necessary to meet the proposed requirements would be passed on to the wards.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of Florida law.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.