

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (H-788) (LD 82 2020)

Date: 7/28/2020

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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 68, L.D. 82, Bill, “An Act To Determine the Necessity for a Public Guardian or Conservator Bond”

Amend the bill by striking out the title and substituting the following:

'An Act To Eliminate the Necessity for a Public Guardian or Conservator Bond'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 18-C MRSA §5-415, sub-§1, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

1. Bond or collateral. Requiring the conservator to furnish bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished. This subsection does not apply to a public conservator;

Sec. 2. 18-C MRSA §5-416, sub-§5 is enacted to read:

5. Public conservator. The court may not require a bond for a public conservator.

Sec. 3. 18-C MRSA §5-710, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

§5-710. Bond not required

The public guardian or conservator is not required to file bonds in individual guardianships or conservatorships, ~~but shall give a surety bond for the joint benefit of the individuals subject to guardianship or protected persons placed under the responsibility of the public guardian or conservator and the State, with a surety company or companies authorized to do business within the State, in an amount not less than the total value of all assets held by the public guardian or conservator, which amount must be computed at the end of each state fiscal year and approved by the Probate Court for Kennebec County. At no time may the bond of each of the public guardians or conservators be less than \$500 respectively.~~

COMMITTEE AMENDMENT

1 **Sec. 4. 18-C MRS §5-711, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

3 **1. Reasonable expenses; account for costs.** The public guardian or conservator
4 may receive such reasonable amounts for its expenses as guardian or conservator as the
5 Probate Court may allow. The amounts so allowed must be allocated to an account from
6 which may be drawn expenses for filing fees, ~~bond premiums~~, court costs and other
7 expenses required in the administration of the functions of the public guardian or
8 conservator. No amounts thus received may inure to the benefit of any employee of the
9 public guardian or conservator. Any balance in the account at the end of a fiscal year
10 does not lapse but is carried forward from year to year and used for the purposes provided
11 for in this subsection.

12 **Sec. 5. Appropriations and allocations.** The following appropriations and
13 allocations are made.

14 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
15 **Office of Aging and Disability Services Central Office 0140**

16 Initiative: Deappropriates funds that will no longer be required to fund guardianship bond
17 insurance.

	2019-20	2020-21
18 GENERAL FUND		
19 All Other	\$0	(\$14,000)
20		
21 GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$14,000)</u>
22		

23 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
24 section number to read consecutively.

25 **SUMMARY**

26 This amendment replaces the bill, which is a concept draft.

27 This amendment eliminates the requirement that a public guardian or public
28 conservator furnish a bond. The Maine Supreme Judicial Court held in *Perry v. Dean*,
29 2017 ME 35, that the State, having not explicitly waived its sovereign immunity provided
30 under the Maine Tort Claims Act, is immune to claims against the State for breach of
31 fiduciary duty owed to the person subject to public guardianship or public
32 conservatorship.

33 The amendment also deappropriates funds no longer needed due to the elimination of
34 the bond requirement.

35 **FISCAL NOTE REQUIRED**

36 **(See attached)**



129th MAINE LEGISLATURE

LD 82

LR 1683(02)

An Act To Determine the Necessity for a Public Guardian or Conservator Bond

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$0	(\$14,000)	(\$14,000)	(\$14,000)
Appropriations/Allocations				
General Fund	\$0	(\$14,000)	(\$14,000)	(\$14,000)

Fiscal Detail and Notes

This bill eliminates a General Fund appropriation to the Department of Health and Human Services of \$14,000 in fiscal year 2020-21 as these funds will no longer be required to fund the guardianship bond insurance. The guardianship bond insurance has increased in the last 3 years from \$14,000 annually to \$46,000 annually. However, no increase in the appropriation was ever given for this increase, so the deappropriation is based on the original funding level.