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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**

**Sec. 4. 18-C MRSA §5-711, 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. Reasonable expenses; account for costs.** The public guardian or conservator may receive such reasonable amounts for its expenses as guardian or conservator as the Probate Court may allow. The amounts so allowed must be allocated to an account from which may be drawn expenses for filing fees, ~~bond premiums~~, court costs and other expenses required in the administration of the functions of the public guardian or conservator. No amounts thus received may inure to the benefit of any employee of the public guardian or conservator. Any balance in the account at the end of a fiscal year does not lapse but is carried forward from year to year and used for the purposes provided for in this subsection.

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

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

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

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

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

**SUMMARY**

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

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

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

**FISCAL NOTE REQUIRED**

(See attached)