3 July 2018

The 128th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 128th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1554, “Resolve, Authorizing Claire Dean Perry and the Estate of William Dean To Bring Suit against the Surety Obtained by the Department of Health and Human Services in Its Capacity as Public Conservator.”

As you, the Legislature, consider this question, it is important to understand that the Department of Health and Human Services’ public guardianship program exists to serve as the guardian of last resort for people with mental disabilities and/or elderly persons when there is no one else willing or able to serve as guardian. As public guardian, the Department must use its reasonable judgment to make various, often time-sensitive, personal and financial decisions. This is precisely the type of decision-making that has long been protected by sovereign immunity and the Tort Claims Act.

This bill is a blatant attempt to change existing rules in the middle of the game and perform an end-run around the judicial process. The subject matter of this bill has been extensively litigated and this litigation ultimately resulted in the Law Court ruling in favor of the Department on the basis of sovereign immunity. Having lost their case in Court, the plaintiffs have now gone to the Legislature looking to have the rules changed in their favor.

They are essentially asking permission to bring another suit against the Department but not allowing the Department to assert the defense upon which it prevailed in the first lawsuit. Allowing the plaintiffs to do this would place the Department at serious disadvantage in assessing and managing the risks associated with the operation of the public guardianship program as well as generally undermining confidence in the fairness and impartiality of the judicial process.

This bill also significantly and materially alters the Department’s surety contract with its insurer and therefore violates Maine’s Constitution, specifically Article I, Section 11, which prohibits the Legislature from passing any law “impairing the obligation of contracts.” Notwithstanding this constitutional problem, the bill is bad policy and would impair the ability of the State to procure insurance in the future. No reasonable insurer would agree to issue insurance to the State if the Legislature decides to change the terms of the insurance contract on a case by case basis.

For these reasons, I return LD 1554 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor