Maine People Before Politics

Analysis of Mills Administration FY21 Supplemental and FY22–23 Biennial Budgets

SUMMARY

The State of Maine's fiscal position in the pandemic is in better shape than initially projected this summer for four significant reasons: the federal CARES Act $1.25 billion in state aid, to which the Mills Administrations shifted personnel and other state budget costs wherever possible; Maine's taxing of unemployment benefits as income, which not all states do and which has provided sustained personal income tax revenue despite massive job losses; the state's implementation of a new sales tax on internet purchases in October 2019 (made possible by a 2018 U.S. Supreme Court decision), which has far exceeded initial revenue projections; and the significant cash balances on hand—such one-time funds as the $70 million tied to the liquor revenue bond and funds in Other Special Revenue accounts.

The Mills budget, therefore, makes use of these funds while employing a number of tactics, like moving more state workers to federal funding lines, offering voluntary unpaid time off and reduced shifts, and increasing projected attrition rates, to bring these budgets into balance.

This budget neglects to make bold policy changes to address areas of particular need, specifically the Mills Administration's own projection of transportation funding shortfalls in the Highway Fund and reform of the system that provides legal services for poor individuals charged with crimes.

Given the precarious position of Maine's economy because of continued limitations imposed on business operations and travel as well as the fallout from remote work and how that will affect the commercial real estate markets in Maine, it is difficult to predict whether the money Governor Mills has set aside will be enough to meet Maine's needs, if—in the unlikely scenario—it remains unspent by the Legislature. Recall that legislators were denied the opportunity to address their priorities last year when they ended their session in March and did not come back into session under either their own or the Governor's authority.

This document outlines areas of concern and missed opportunities.

BUDGET OVERVIEW

MPBP Concern: The Biennial Budget is not flat.

In 2019, Governor Mills initially proposed an $8.041 billion budget: an 11 percent increase over the prior budget with almost a billion dollars of new spending. The Legislature passed, and she signed into law, a $7.98 billion budget. The supplemental budget passed last year, as well as individual bills, added more spending, although the supplemental that passed on the last day of the session before the state was locked down was significantly less that what Governor Mills had proposed earlier in the year. This new budget proposal is $8.394 billion, about $400 million more than the FY2021–2022 budget.

After the biennial budget passed in 2019, her administration negotiated new collective bargaining agreements with the state employee unions, including a 3 percent salary increase in October 2019, a 4 percent increase that just went into effect last month and increases in longevity pay and shift differentials. As the headline from the Bangor Daily News put it at the time, **"'Everybody got something' in deal with Janet Mills, Maine employees union says."**

These cost increases were not part of the last biennial budget. Instead, the personnel cost increases have been built into the baseline of the new budget by the State Budget Office, as well as the costs of other laws passed during the last session outside the budget process. Therefore, the "baseline" budget is automatically an increase over the last budget. Thus, although the Governor claims she is only adding $57 million in new spending, she is not including the raises she has provided to state employees, which should be counted as part of the Mills Administration's overall spending increases.

MPBP Concern: Media reports that this budget doesn't raise taxes are false. The biennial budget specifically adds new taxes and fees.

The Governor and her staff have been careful to say that the biennial budget proposal does not raise "tax rates." This has been construed by some members of the media to mean that it does not add any taxes or revenue streams.

First, the biennial budget adds the digital streaming tax on audio streaming, video streaming, and even ringtones (Part H). This would start next fall. This same tax was proposed in a stand-alone Department of Administrative and Financial Services bill last year, although its revenue was included in the Governor's supplemental budget.

Second, the biennial budget expands the ConnectMaine 10 cents per line monthly fee (Part Z), which currently is only on wired lines and which replaced an existing 10 cent charge (creating no net increase to the consumer), to every type of phone carrier line, including cell and voice over internet protocol. Collection of this fee by wireless carriers is currently voluntary. This mandatory collection would start next January. This fee is essentially a tax on business and consumer phone lines that is redirected to pay for broadband expansion.

MPBP Concern: The budget shifts significant state spending to federal lines in Labor, DVEM, DHHS and other agencies.

State agencies are accountable to the federal government for how federal dollars are used. When budgets get tight, one gimmick is to take positions that do both federally funded work and state-funded work and push the costs for the state-funded work onto the federal account. For example, a 50 percent General Fund-50 percent federal funds position becomes a 30 percent General Fund-70 percent federal funds position. The workload should shift so that the tasks qualifying for federal funding increase accordingly. Often, however, the workload remains largely the same. When these federal accounts are audited, the federal funds used to pay for unauthorized, formerly state-funded work become a "disallowed cost," and the state is required to pay back those funds to the federal government.

This was an area in which the LePage Administration spent significant time and state-funds realigning in several budget cycles, after having to pay back disallowed costs in a number of departments, especially in Labor and DHHS, that occurred under the Baldacci Administration when the same tactic had been employed to save General Fund dollars.

MPBP Concern: The budget is vulnerable to the Mills Administration's decision to use federal CARES Act funding for hazard pay for state workers, which ended on December 31, 2020, when the federal funding ran out.

Governor Mills awarded certain state workers hazard pay at the beginning of the pandemic, and she used the federal CARES Act money to cover those additional costs, about $1.5 million a month. If this work was truly hazardous and deserving of an increase in pay, it would seem, as the spread of the virus is much worse now than when the pay was awarded, that the workers would be continuing to work in hazardous-duty positions and deserving of the additional pay.

MPBP does not agree that bumping state employee salaries for hazard pay was an appropriate use of either state or federal funds—especially increases as much as $5 an hour. State employees have excellent health insurance and significant job security, which many front-line workers in grocery stores, hospitals, nursing homes, and other facilities do not have. Furthermore, state employees did not experience layoffs or pay cuts due to the Coronavirus pandemic as did thousands of private-sector workers, and last month state employees received the 4 percent raises negotiated under the 2019 collective bargaining agreements.

However, once the decision is made, especially for workers under collective bargaining agreements where consistent treatment and precedents play into labor-relations decisions, ending hazard pay without a change in working conditions could be deemed arbitrary. Working conditions make a job hazardous, not the availability of extra federal cash. The Mills Administration did not think through the consequences of using the time-limited federal funds this way and has made no provision to continue the hazard pay in either the supplemental or biennial budgets.

The state employee unions could file grievances as a result. The Maine Service Employees Union filed a complaint last month for access to more information about how and where employees are working and their exposure to COVID-19. That could set the stage for a request for back-hazard pay for other workers and another request for the continuation of hazard pay going forward, which would have to be paid using state funds. The Commissioner of DAFS wrote to employees that continuing the hazard pay would require "significant" layoffs or cuts that would hamper the state's ability to respond to the pandemic, according to a report in the Bangor Daily News.

MPBP Concern: The budget uses unlikely attrition rates and offers of voluntary, unpaid time off to achieve personnel savings. These are the same or similar to budget gimmicks we have seen in the past.

This budget does not lay off workers or create furlough days, but it assumes more workers will leave state service by hiking the attrition rate to 5 percent from 1.6 percent. This also requires that vacant positions remain unfilled to meet that target. If that attrition rate is not met, a shortfall will result that will have to be addressed in a supplemental budget. If there is a long-term dampening of the job market, state workers will be unlikely to leave state service for the private sector, making it harder to achieve the attrition rate.

The budget in Part Q creates a new incentive for state workers to voluntarily reduce their workweek by as much as 50 percent or take voluntary unpaid time off while keeping the level of health insurance coverage and other benefits they had before the schedule change. Governor Baldacci forced unpaid time off with furloughs of state employees. In this case, Governor Mills is making the unpaid time off voluntary and permanent as long as the worker applies before June 30, 2023. This is going to have unknown effects on the staffing of agencies, especially those that are public facing.

Many workers may want to work part-time schedules, up to half a workweek, knowing that they will have full healthcare coverage. This leads one to ask, how will all the work be done with a combination of more vacant positions and more workers working reduced schedules? This policy creates a host of management issues for state agencies while providing taxpayers with additional expenses and less work accomplished overall.

In her last biennial budget proposal, Governor Mills claimed that state government needed to be rebuilt. In that budget she created a number of new positions, and state agencies went on a hiring spree to fill existing positions left vacant under the LePage Administration. Now, when faced with a shortfall, Governor Mills's proposal indicates that state government—even in a state of civil emergency—can operate with not only with fewer workers, but also with employees working part-time schedules with full-time benefits.

Governor Mills is trying to avoid the difficult decision to lay off state workers. That decision comes at a cost to taxpayers.

MPBP Concern: Instead of paying for priorities in cash, Maine will use a credit card, borrowing unnecessarily, while not only the Legislature will be considering new bonds but also Governor Mills has announced intentions to bond for climate change programs and her administration has demonstrated a need to continue to bond to maintain the state's transportation infrastructure.

MPBP raised this concern in the prior biennial budget, and the concern remains.

- This budget expands the ability to bond to cover capital costs.
- It reduces the lifespan of the projects qualifying for bonding from 10 years to five.
- It significantly cuts money for capital expenses from state agencies.
- It allows several agencies to lease equipment at longer terms and interest rates of 5 percent and 7 percent instead of outright purchasing it, which would be a better investment of taxpayer money than paying interest on things like computers, which have a limited lifespan.

MPBP Concern: The biennial budget consolidates accounts and removes the need for legislative approval prior to shifting funds to pay bills, especially in DHHS.

First, it allows DHHS, which has very dedicated funding lines for a reason—they are the largest state agency and spend billions of dollars, much of it through Medicaid's many programs—to consolidate 13 Medicaid accounts into four.

This consolidation is especially concerning because these accounts specifically include the six major waitlists for people with intellectual disabilities, Autism, brain trauma and in need of other significant supports. As of July 1, 2020, these waitlists stood at a combined 2105 unduplicated persons, up from 2017 on April 1, 2020.

Allowing the Governor and the Commissioner to move the state money around between those Medicaid accounts without prior Legislative approval raises concerns about accountability and transparency. This would be true for any administration doing this for a program with a history of cost overruns like DHHS.

The consolidation of the accounts including Sections 18, 20, 21, and 29, unaccompanied by DHHS's plan as to how those waitlists will be addressed and any relevant statutory changes, raises concerns about how the needs of these vulnerable populations will be met going forward.

MPBP Concern: This budget repeals the fund created to provide tax relief.

Part F repeals the Property Tax Relief Fund. This was originally a fund established under Governor LePage (the Tax Relief Fund for Maine Residents) as a dedicated account for surplus revenue that was to be used, when it hit a certain threshold, to reduce the state income tax rate.

In 2019, Speaker Gideon sponsored a bill that renamed to fund to the Property Tax Relief Fund and added stipulations so that the money in the account would result in a $100 rebate to homeowners who qualified for a Homestead property tax exemption. Speaker Gideon's "property tax relief" bill was signed into law by Governor Mills in 2019. Later that year, the State Treasurer issued these rebates, which were then touted in the former speaker's 2020 campaign against U.S. Senator Susan Collins.

Now Governor Mills wants to repeal the fund entirely, indicating that she is no longer interested in providing tax rebates to property tax owners or reverting the fund back to its original purpose of income tax relief.

MPBP Concern: Medicaid Expansion still lacks a long-term funding mechanism other than the General Fund.

Medicaid Expansion funding in the prior budget relied on continued revenue growth. The number of people who enrolled in Medicaid under the expansion lagged predictions, due in large part to the strong economy of 2019. However, with tens of thousands of low-income workers losing their jobs in 2020 during the pandemic, the number of people enrolled in Medicaid Expansion has topped 70,000—about the initial predictions of enrollment. Of that total, 59,000 are adults without children; more than a third of those adults without children—22,000—are between the ages of 19 and 29.

A report provided just last week to the Appropriations and Financial Affairs Committee noted that "expenditures are increasing, as is membership, in MaineCare." MaineCare is the name of the state's Medicaid program.

MaineCare has had additional federal funds to cover some state costs this current fiscal year because the federal government agreed to pay an extra 6.2 percent of the cost of traditional Medicaid (a temporary increase to the FMAP, the federal government's share of Medicaid expenses) under the 2020 Families First Coronavirus Response Act. This is reflected in the supplemental and biennial budgets.

However, there are significant restrictions that come with accepting those funds.

- The FMAP bump is temporary. It is only authorized until the end of the month that the national emergency ends.
- The FMAP increase only pays for people covered by traditional Medicaid, not people enrolled under Medicaid Expansion.
- Maine cannot change any of the Medicaid eligibility restrictions that were in place on January 1, 2020, and Maine cannot raise premiums higher than the premiums in place on that date while accepting the FMAP increase.
- Maine must provide continuous coverage for beneficiaries who were enrolled as of or after March 13, 2020, the date the Trump Administration declared a national emergency. This applies to both traditional Medicaid and Expansion Medicaid. Initially beneficiaries could not even be unenrolled for fraud, but the federal government revised this position last fall; states can now unenroll individuals if the state made an error in enrolling the beneficiary or the beneficiary is convicted of fraud. Maine has not released any numbers reflecting ineligible enrollees.
- The only other ways a person can be removed from traditional or expanded Medicaid while Maine accepts this money, other than the state proving fraud, is if the Medicaid beneficiary passes away, voluntarily unenrolls, or moves to a different state.
- For Maine, this means that the number of people enrolled in Medicaid Expansion will continue to grow until at least until the end of the national emergency. These requirements allow people to continue to receive taxpayer-funded medical benefits even if they have returned to work with an income that exceeds eligibility requirements and/or would be able to purchase insurance through their employer or off the exchange.

These factors will have long-term implications for the state's share of the costs of Medicaid Expansion. This budget only transfers an additional $25.5 million to the Medicaid reserve. As people return to accessing medical care at pre-pandemic levels and potentially even more people qualifying for Medicaid because of job loss and other factors related to how the economy recovers, the state should expect to see a corresponding increase in the state's costs for both the traditional and expansion populations.

MPBP Concern: The supplemental budget repeals the poorly conceived Working Cars for Working Families $6 million car welfare program, but then in each of this current and the next two fiscal years Governor Mills allocates $1.4 million to pay for transportation for people not in TANF who are working and make 200 percent or less of the poverty level.

The Mills Administration rolled out the Working Cars for Working Families program last June, which had been authorized in the 2018–2019 biennial budget but not implemented under the LePage Administration. Its exceptionally vague statutory language allowed the Mills Administration to design the entire program in rulemaking. What the Mills Administration proposed was a massive, bureaucratic and poorly planned program to use $6 million in taxpayer dollars to give away new cars of any model or value for pennies on the dollar.

Now, after MPBP has pointed out the many considerable flaws of this program (see our public comments in response to the initial rules and additional comments we submitted after the request for proposals was posted), Governor Mills has made the move to repeal it entirely, even though DHHS had actually gone so far as to award the contract for the program.

People elect a governor to ensure that agencies are managed to achieve clear and consistent policy goals; part of that responsibility to govern is oversight of the regulatory process, rulemaking in particular. In March of 2019, Governor Mills issued Executive Order 4, which reversed Governor LePage's executive order requiring proposed rules be approved by the Governor's Office. Governor Mills's order allows state agencies to propose rules outside the oversight of the Governor and her staff.

MPBP is looking into what involvement, if any, the Governor's Office had in the development of the Working Cars for Working Families proposal. If the Governor's Office was not involved but Governor Mills has decided that the program as designed by her own DHHS is so poor that the authorizing statute, which sunsets on June 30, 2022, must be fully repealed in the supplemental budget, this action would support the intent of Governor LePage's executive order.

If the Governor's Office was involved in designing the program's rules, it would appear that the Mills Administration has changed tactics after negative public pushback on the program. Governor Mills is now proposing to provide new transportation options under existing TANF benefits for non-beneficiaries. MPBP will explore what those options could include. **MPBP maintains that Maine's safety net must be preserved for the most vulnerable. To expand programs for people who meet the eligibility requirements for TANF to people who do not is an inappropriate use of taxpayer dollars.**

MPBP Concern: SNAP overpayments.

Part P of the Supplemental Budget authorizes DHHS to reimburse the federal government $1,335,770 for improperly made SNAP, or food stamp, payments in FY2019. Maine's payment error rate was 19.12 percent in 2019, the second highest in the nation (behind Rhode Island at 22.66%). This was a 6.82 percent increase over the FY2018 error rate.

Given that Maine's economy continued its record-setting growth rate in 2019, it is unclear what specific factors triggered these overpayments. We do know, however, that Governor Mills loosened eligibility requirements for a number of welfare programs during her first year in office, and this error rate may be tied in part to that expansion of benefit eligibility. **MPBP is concerned that this may be an indication that fraud and waste in Maine's welfare programs are increasing under the Mills Administration.**

Missed Opportunities

- **Transportation Funding**

In 2019, Commissioner of Transportation Bruce Van Note told the Blue Ribbon Commission To Continue Studying and Recommend Funding Solutions for the State's Transportation Systems that the state had a transportation funding shortfall of about $332 million a year. At the time he made this statement, which he has reiterated as recently as last November: "Until there is a fundamental change in the way our state pays for its infrastructure, the dedicated and hardworking men and women of MaineDOT will be left to competently manage the slow decline of Maine's transportation system."

The Blue Ribbon Commission recommended that the state continue bonding at $100 million a year. It hoped the federal government would cover about 30 percent of the state's shortfall of the remaining $232 million, leaving a projected annual shortfall of about $160 million.

The commission did not find a unanimous solution to address the shortfall, but it did agree that more of the General Fund should be dedicated to road and bridge repair, although it could not agree on what percentage of General Fund should be redirected to the Highway Fund. The commission did, however, reject reinstating the automatic annual gas tax increase indexed to the Consumer Price Index.

Not only does the Mills budget not address this shortfall, but it also does nothing to at least even the road-maintenance support disparity between drivers who drive hybrid and all-electric vehicles and thereby pay significantly less in gas taxes, which are dedicated to the Highway Fund, than drivers of gasoline and diesel fueled vehicles.

- **Indigent Legal Services**

The budget makes no significant changes to the state's criminal defense legal services for the poor, which has been revealed by the recent Office of Program Evaluation and Government Accountability (OPEGA) investigation to be a wasteful, ineffective system with skyrocketing costs.

The biennial budget does propose to change the system's rulemaking requirements from major substantive, a process that requires legislative approval and is a generally slow moving, to routine technical, which can be reformed within the agency. But giving more responsibility to an agency that has shown it has been unable to handle the authority it already had does not inspire confidence that any new rules the Commission on Indigent Legal Services adopts will prove effective for immediate, widespread reform or put a cap on cost overruns.

Maine needs to implement a public defender program. This seems a natural area of reform for a former Attorney General, but the Mills Administration missed an opportunity to provide better legal assistance to Maine's poor in the criminal justice system. A blueprint would be recommendations put forth in prior budget proposals by Governor LePage.

- **Waitlists**

According to her Budget Overview, Governor Mills directs an additional "$6 million to fund Section 29 Services for adults with developmental disabilities in their homes and communities by an additional 30 slots per month." As of July 1, 2020, there were 321 people on the waitlist for Section 29, and another 1,790 for Section 21. With the proposed consolidation of these waiver accounts into one, it is unclear if these funds are to be used exclusively for the Section 29 waitlist while leaving another 1790 individuals in need of services.

All of the DHHS waitlists for people with disabilities should be eliminated.

- **Unemployment**

The biennial budget does not contain any initiative to address the strains on the unemployment system coming out of a year of unprecedented use by tens of thousands of Maine workers. The global consulting firm McKinsey garnered almost $7.5 million of CARES Act funding last year in two no-bid contracts with the state's labor department to "Assist the Department of Labor with analysis and recommendations on the Unemployment Insurance program operations." This work was due to end in December per the contract extension.

Although the biennial budget extends the funding for the limited period-positions added over the past year to handle the increase in unemployment claims, there is only a net increase of .5 permanent federally funded FTE in the Bureau of Unemployment Compensation for the Department of Labor over the current fiscal year, and the Administration maintains the drop from 50 to 47 FTEs paid by the Other Special Revenue line. In other words, this budget provides for a net decrease in permanent staff in unemployment from the current fiscal year.

It does not appear that the $7 million investment in McKinsey and the six months they spent in the department generated any statutory or significant staffing changes that would need to be included in the budget, and no recommendation for an increase in permanent positions.

- **Taxes**

While Governor Mills may not have raised tax rates in her second budget, the tax environment faced by Mainers and Maine businesses continues to prevent the state from being competitive regionally and nationally.

Maine's current top individual income rate bracket of 7.15 percent is the second highest in New England, although Vermont's top rate of 8.75 percent only kicks in for those earning over $200,000 annually. Maine's top rate, which kicks in at $52,600, is uncompetitive compared to New Hampshire's 0 percent rate and is more than 40 percent higher than the flat tax rate in Massachusetts, which was lowered to 5 percent in 2020.

These tax rates may be influencing who chooses to move to New Hampshire over Maine. According to the latest U.S. Census data, New Hampshire has seen the largest increase in population for July 2019 to July 2020 of the New England states, a position it has held for three years in a row. Analysis on the recent moves to New Hampshire indicate the recent migration gains were greatest among young adults.

In order to grow our workforce, Maine needs a competitive edge to attract remote workers and families looking to settle in areas they perceive as less affected by the Coronavirus. Reducing tax rates would be one way to level the playing field with New Hampshire and become the leading New England state for attracting in-migration.

Increasing our population would also strengthen the state's year-round economy. Cutting income tax rates would particularly help self-employed individuals hurt by the pandemic rebound from the profound losses they experienced this year.