Office of
The Governor

NO. 11 FY 20/21
DATE September 17, 2020

AN ORDER CURTAILING ALLOTMENTS

WHEREAS, I proclaimed a state of emergency on March 15, 2020 and renewed states of emergency on April 14, 2020, May 13, 2020, June 9, 2020, July 8, 2020, August 5, 2020 and September 2, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the serious health and safety risks of the highly contagious COVID-19 virus; and

WHEREAS, the economic effects of this COVID-19 pandemic have caused the economy of Maine and every other state to perform significantly below expectations; and

WHEREAS, I have advocated, along with my fellow governors, for additional federal aid and flexibility in aid already awarded to assist the states in addressing the many challenges the COVID-19 pandemic presents;

WHEREAS, as a result of the COVID-19 pandemic, the Consensus Economic Forecasting Commission met in June and revised its February 2020 economic forecast; and

WHEREAS, on July 29, 2020, the Revenue Forecasting Committee (RFC) met and revised its March 2020 report; and

WHEREAS, as noted in the RFC report to the Appropriations Committee, General Fund revenues are projected to be reduced by $528 million in FY21, and Highway Fund revenues are projected to be reduced by $31 million in FY21; and

WHEREAS, on August 7, 2020, the Commissioner of the Department of Administrative and Financial Services reported in writing to me that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the 129th Legislature for FY21; and

WHEREAS, 5 M.R.S.A. §1668 empowers me upon receipt of the Commissioner's report to curtail allotments equitably and, insofar as practicable, consistent with the intentions of the 129th

Legislature so that expenditures will not exceed the anticipated income and other available funds of the State in FY21; and

WHEREAS, the Maine Superior Court opined in *Butterfield v. Department of Human Services*, No. CV-91-29 (January 17, 1991) that under §1668 "program cuts must be fair but need not necessarily be imposed equally by percentage. This recognizes the maxim that there is perhaps no greater unfairness than absolute equality mechanically imposed across a broad spectrum of persons or programs. The term 'equitably' implies making of choices rather than uniform, across the board equality …"; and

WHEREAS, the Office of the Attorney General has opined in several opinions that "equitable" means "just, fair and right, in consideration of the facts and circumstances of the individual case;" that §1668 does not require across-the-board curtailments; and that §1668 permits the exercise of discretion in determining what constitutes equity and what constitutes practicable compliance with legislative intent; and

WHEREAS, in guiding the exercise of discretion at this time, I have examined the following principal factors:

1. The amount of General Fund dollars available in the 2nd, 3rd and 4th quarter allotments of each entity of State government;

2. The percentage that those amounts represent of an entity's budget;

3. The budget reductions, if any, already taken by an entity in this biennium;

4. The contractual obligations or significant administrative burdens that restrict an entity's ability to achieve curtailment savings;

5. The nature of the services that an entity provides and the degree to which those services directly protect or promote:

    a. public health and safety;

    b. educational welfare; or

    c. effective operation of state government;

6. The type of services that an entity provides and degree to which those services are principally:

    a. informational or advisory;

    b. regulatory; or

    c. direct-care;

7. The nature of harm that would be caused by a curtailment and the degree to which that harm would be:

   a. certain or potential;

   b. direct or indirect;

   c. reparable or irreparable;

   d. short-term or long-term; and

WHEREAS, the inquiry into factors like these constitutes a rational, reasonable, fair, and therefore just means by which to exercise discretion; and

WHEREAS, the curtailments ordered faithfully preserve the priorities of the 129th Legislature by imposing insofar as practicable the least certain, the least direct, and the least irreparable harm to the health and safety of our public, the educational welfare of our students, and the effective operation of our government; and

NOW THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 5 M.R.S. § 1668, hereby Order as follows:

I. ORDER

The Commissioner of Administrative and Financial Services shall curtail Fiscal Year 2021 quarterly allotments by $221,775,584 in General Fund accounts, and by $23,000,822 in Highway Fund accounts, in the amounts specified in the attached Financial Order.

II. SEVERABILITY

Any portion of this Order declared by a court of this State to be invalid as a matter of law shall be severed from those portions not so declared and shall be subject to revision by a subsequent Order.

III. EFFECTIVE DATE

This Order shall take effect on September 17, 2020.

Janet T. Mills
Governor