Washington Research Council

# Policy Brief

May 26, 2020 PB 20-08

# How Much of the State Budget is "Protected"?


**Briefly**

*The Office of Financial Management estimates that about 70 percent of the 2019–21 budget is protected from cuts. If that is the case, then any budget cuts to offset the revenue effects of the COVID-19-related downturn would need to come out of the remaining 30 percent of the budget. However, these figures are essentially a political construct—the 70 percent estimate includes items that could be cut, though it may be difficult to do so for various reasons.*

*Indeed, the discretionary parts of the budget did bear the brunt of the Great Recession spending reductions. But even if the state is required to provide certain services, it is not the case that it must always spend the same amount on those services. More efficient delivery methods could be found for many programs, and such changes could reduce the share of the budget devoted to "required" costs, reducing the pressure on the other parts of the budget.*


Gov. Inslee and the Legislature are preparing for an expected major downward revision to the state revenue forecast in June. The response will include cutting spending.

But, according to a preliminary estimate from the Office of Financial Management (OFM), about 70 percent of the 2019–21 budget is protected from cuts. If that is the case, then any budget cuts to offset the revenue effects of the COVID-19-related downturn would need to come out of the remaining 30 percent of the budget. However, these figures are essentially a political construct—the 70 percent estimate includes items that could be cut, though it may be difficult to do so for various reasons. (The numbers in this brief are in terms of funds subject to the outlook.)

### OFM's Estimate

OFM's 70 percent figure includes spending that is protected by the state constitution and spending that is required by law (including federal law). The portion that is protected by the constitution is 56 percent of the 2019–21 budget. This includes:

- K–12 basic education,
- Debt service,
- Contributions to retirement systems, and
- State hospitals and residential habilitation facilities.

The portion that is considered required by law is 15 percent of the 2019–21 budget. This includes:

- Medicaid,
- Miscellaneous other required spending through the Department of Social and Health Services (DSHS),
- Spending on things like adoption support and foster care through the Department of Children, Youth, and Families (DCYF), and
- Judicial agencies.

In a similar exercise in 2014, OFM estimated that 66 percent of the 2013–15 budget was protected. The increase in that share to the current 70 percent appears to be due to the expansion of

**NGFO Plus WEIA**

In recent years, legislative fiscal committee staffs have based budget presentations on a synthetic "account" that rolls up the general fund–state (the state's primary budget account) with the education legacy trust account and the opportunity pathways account, because they believe that it better reflects the entire budget situation. This roll-up is called "funds subject to the outlook" or the near general fund–outlook (NGFO). (Under the four-year balanced budget requirement, a positive ending balance is required in both the current and following biennium on an NGFO basis.)

In 2019, the Legislature created the workforce education investment account (WEIA) to fund higher education programs. As these programs would typically be funded through the NGFO, it is appropriate for budget transparency purposes to roll up the WEIA with the NGFO. Under legislation enacted in 2020, the WEIA will be included in the NGFO going forward.

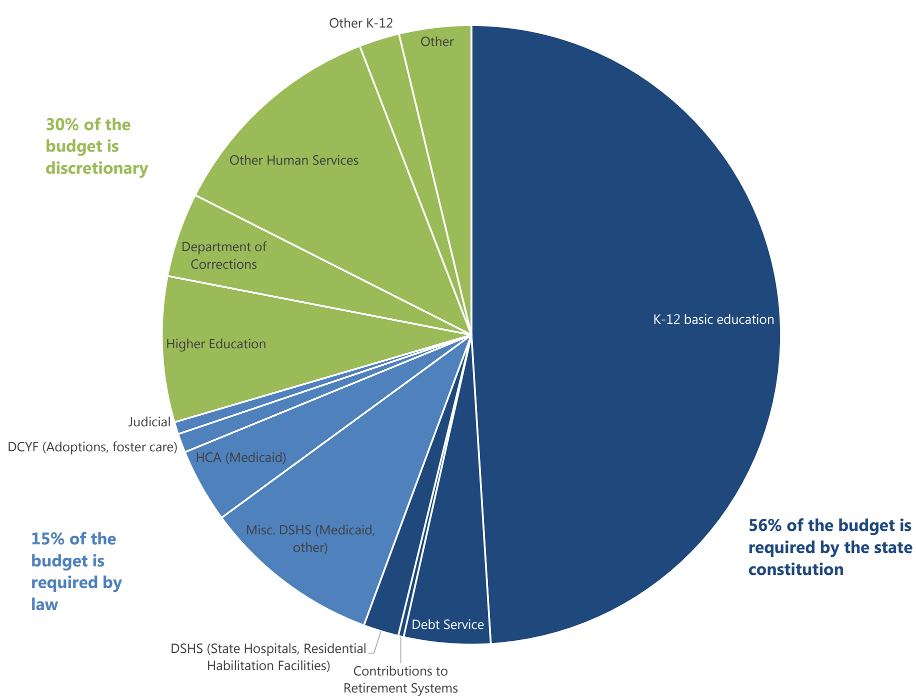
basic education in recent years. (Unfortunately, the human services programs that are considered protected are not accounted for separately in public budget documents, so it is impossible to show trends in that spending.)

### Why Are These Items Considered Protected?

First, the state constitution specifies that it is the "paramount duty of the state to make ample provision for the education of all children residing within its borders" (Article IX). In McCleary and previous cases, the state Supreme Court ruled that this means the state must provide a "basic education" (McCleary 2012). The definition of "basic education" has changed over the years; indeed, in the McCleary decision, the Court specified, "The legislature has an obligation to review the basic education program as the needs of students and the demands of society evolve." However,

> *. . . to ensure that the legislature exercises its authority within constitutionally prescribed bounds, any reduction of programs or offerings from the basic education program must be accompanied by an educational policy rationale. That is, the legislature may not eliminate an offering from the basic education program for reasons unrelated to educational policy, such as fiscal crisis or mere expediency.* (McCleary 2012)

Chart 1: OFM's Estimate of Protected Budget Areas, 2019–21




Basic education makes up 49 percent of the 2019–21 state budget, but the Court has ruled that it should not be cut due to a fiscal crisis. (Note, though, that during the Great Recession, federal stimulus funds were used to supplant state funding—especially for K–12 and Medicaid.)

Second, debt service and contributions to retirement systems are protected because under the state constitution, "No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed" (Article 1, Section 23). A state Supreme Court decision from the 1950s held that public employee pensions are "deferred compensation for services rendered" and are thus contracts (Bakenhus 1956). (In 2014, the state Supreme Court ruled that certain pension "sweeteners" can be repealed, under certain conditions (WEA v. DRS 2014).)

Third, state hospitals and residential rehabilitation facilities are included as constitutionally-mandated costs. The state has obligations to individuals with developmental disabilities under federal laws, and institutional care is typically covered by Medicaid. As KUOW reported last year, "Historically, when lawyers have sued on behalf of developmentally disabled people in Washington they've done so under federal law, such as the Americans with Disabilities Act" (Jenkins 2019). But there's also Article XIII of the state constitution:

> *Educational, reformatory, and penal institutions; those for the benefit of youth who are blind or deaf or otherwise disabled; for persons who are*

*mentally ill or developmentally disabled; and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law.*

After these constitutionally-required items, the items in OFM's "required by law" category appear to be more exposed to potential cuts. First, OFM includes all of the judicial budget area, but that area was cut overall during the Great Recession.

Second, Medicaid spending is also included. Medicaid is an optional joint program of the state and federal governments. Ultimately, the state is not required to participate, but it would lose substantial federal funding used to provide health care to low-income people if it chose not to. Some portion of the state's Medicaid spending is for programs and populations that are required to be funded as a condition of participating in the program. The rest is for optional programs and populations the state has chosen to add (and which also receive federal matching funds). If the state doesn't fulfill its obligations for the first (mandatory) portion, it loses all matching funds. If the state cuts the optional programs, it only loses the matching funds attached to those programs.

Thus, the mandatory Medicaid programs are harder to cut than the optional programs. And because of the federal match, even the optional programs are harder to cut than a purely discretionary program. For example, if the state cuts $1 of natural resources spending, it loses $1 of services. Generally, if the state cuts $1 of its Medicaid spending, it loses at least $2 of services. (One of the federal coronavirus relief bills increased the federal match, and certain populations earn a higher match.) Despite these practical reasons to avoid cutting Medicaid, Washington did cut parts of it during the Great Recession (Makings 2020).

**Technically, 70 Percent of the Budget is Not Off-Limits**

Although the items considered protected may be more difficult than others to cut, it is not the case that they can *never* be cut. Indeed, OFM has regularly asked agencies to identify savings and has not exempted some of the budget areas it includes in its estimate that 70 percent is protected.

For example, OFM recently asked state agencies to identify savings of 15 percent in preparation for spending reductions that may be necessary in the downturn (Schumacher 2020). Basic education, debt service, and retirement contributions are not subject to the request, as they are protected by the state constitution. However, the entire DSHS budget and the entire Health Care Authority (HCA) budget are subject to that request. (The HCA is responsible for Medicaid.)

Similarly, in developing the 2015–17 budget, OFM asked agencies to re-base their budgets below maintenance level (the costs of continuing current services, adjusted for caseload and inflation growth). This request did not apply to programs protected by the state constitution or federal law (debt service, basic education, pension contributions, and mandatory Medicaid). (OFM 2014)

And when former Gov. Gregoire ordered across-the-board cuts in response to the Great Recession, OFM noted, "When execution of a reduction in an allotment would withhold spending authority in a way that inevitably would violate the federal or state constitutions, the reduction will not be made" (Brown 2010). In practice, this meant that the cuts did not apply to basic education, debt service, and contributions to retirement systems. Using this narrow definition, the protected share of the budget was 40 percent in 2008. With the expansion of basic education, it is 53 percent in 2021—considerably lower than 70 percent.

Still, regardless of whether the "protected" parts of the budget can technically be cut, the discretionary parts of the budget did bear the brunt of the Great Recession spending reductions. Chart 2 compares the spending change from 2008 to 2012 for the budget areas that OFM considers to be protected versus those that are not protected. Chart 3 shows the change in spending for these areas from 2013 to 2021. (The charts use the total spending figures for the human services budget areas, as we do not have the exact amounts that OFM considers protected.)

Chart 2: Change in State Spending, 2008 to 2012 (Dollars in Millions)

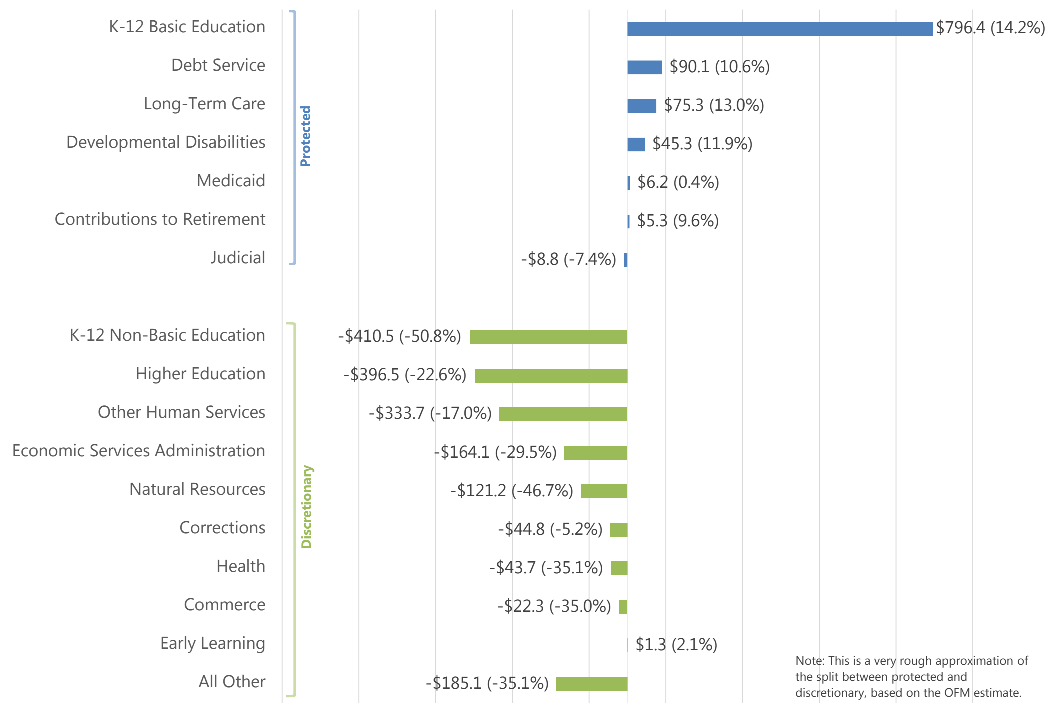
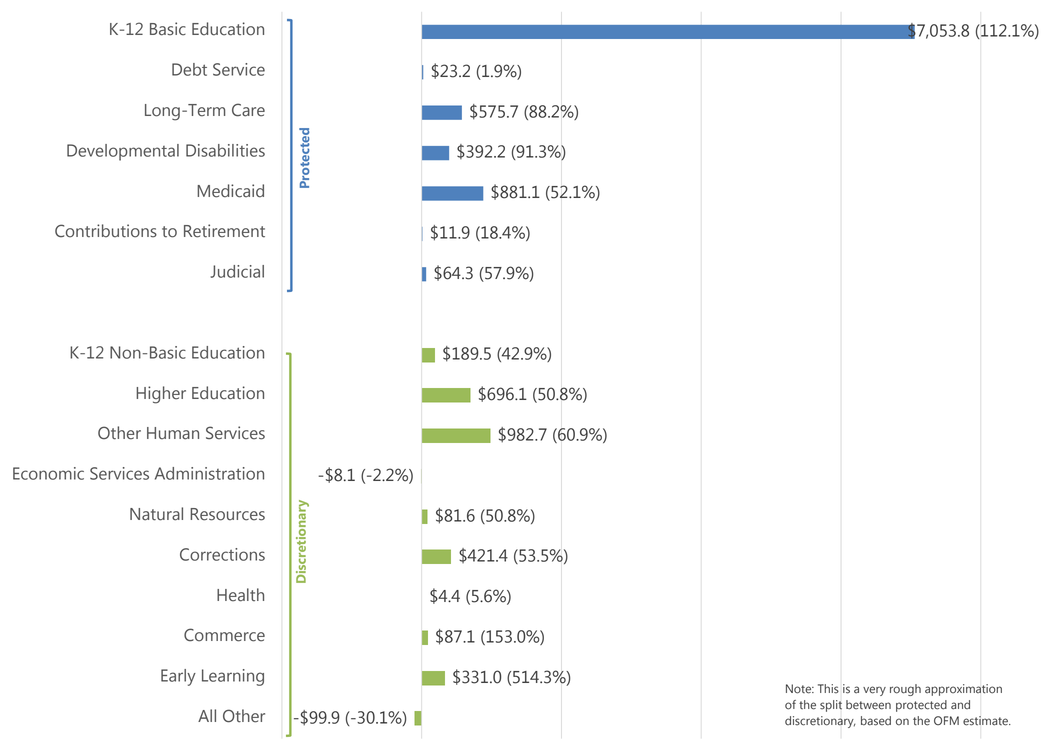



Chart 3: Change in State Spending, 2013 to 2021 (Dollars in Millions)



### Comment

Ultimately, it is not the case that 70 percent of the budget cannot be cut. Nevertheless, it is true that a large proportion of state spending is much more difficult to cut than the rest.

But it's important to note that it is the services that are protected, not the funding. Even if the state is required to provide certain services, it is not the case that it must always spend the same amount on those services. More efficient delivery methods could be found for many programs. For example, basic education could be reimagined in ways that improve educational outcomes but happen to cost less, or the state could take on less debt to reduce debt service costs. Such changes could reduce the share of the budget devoted to "required" costs and thereby reduce the pressure on the other parts of the budget.

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