With Proposition CC’s failure, Colorado Democrats face a budget crunch in 2020. Here are their 4 options to address it.

Democrats in the Colorado legislature will have to choose between sacrificing parts of their ambitious agenda, or finding creative — and politically risky — ways to pay for it.

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Brian Eason

With the defeat of Proposition CC, voters ensured two features of Colorado
Taxpayer refunds and the periodic legislative exercise in avoiding them.

The 2020 budget cycle is shaping up to be no exception. The legislative session is still weeks away, and Colorado budget writers already face a daunting list of requests.

Two federal health care programs -- the Children’s Health Insurance Program and a supplemental funding program for hospitals -- are scheduled to reduce their payments to Colorado by nearly $70 million next year.

Gov. Jared Polis, a Democrat, has asked again for $69 million he was denied last session to expand the state preschool program, provide paid family leave to state employees and stash money in the rainy day fund.

Democratic lawmakers, who control both legislative chambers, have spending ambitions of their own, like a family leave program for private sector workers.

And the Joint Budget Committee still has to find a way to pay for $80 million to $100 million worth of legislation that passed in 2019 -- all while doling out $428 million in taxpayer refunds through various mechanisms, with more refunds likely on the way next budget year.
“We’re in a really tough place,” state Sen. Dominick Moreno, a Democratic budget writer from Commerce City, told The Colorado Sun in an interview. “And I think it’s going to mean that there’s a lot more scrutiny on how we proceed, on what kind of policy changes we consider.”

Prop. CC, the measure to permanently eliminate the state revenue cap, along with the refunds owed under the Taxpayer’s Bill of Rights, would have alleviated much of the budget pressure, providing lawmakers as much as $1 billion in new revenue to spend over the next two years under some estimates. But voters resoundingly rejected the TABOR overhaul in the low-turnout contest earlier this month.

Now, Democrats will have to choose between sacrificing parts of their ambitious agenda, or finding creative -- and politically risky -- ways to pay for it. That could include strategies that have worked in the past, like raising new fees to fund public programs or exempting existing fees from the TABOR cap.
There’s even preliminary talk of a more ambitious move: exempting the $660 million gas tax from the state’s revenue limits.

As of now, budget writers say, everything’s up for consideration. But some things, of course, are more likely than others. Here’s four options Democrats are discussing in the wake of Prop. CC’s defeat.

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**Option 1: Raise new fees.**

Under TABOR, using fees to raise revenue is the most direct way to generate money without asking voters for permission to increase taxes, as required by the constitution. It also risks political backlash, because it hits voters’ wallets directly.

One proposal that’s sure to resurface from a year ago is a family medical leave program, which would be financed like insurance, through employee and employer payroll deductions. The proposal was rejected last year with the legislature opting instead to commission a study on the issue. An earlier version would have raised more than $900 million in annual premiums to fund the program.

In the past, lawmakers have also relied on fees to fund more traditional public services, like highways, bridges and parks. In an election year, though, even lawmakers who believe new fees are justified may be hesitant to pull the trigger.

“I think some members are very comfortable with it, some are less comfortable and we’re just going to have
to see if we can craft something that will work broadly across the (General) Assembly,” said Rep. Chris Hansen, a Denver Democrat who also serves on the Joint Budget Committee.

But because the state is over the TABOR cap, there’s a flip side to that coin: Not all fees will create new revenue that can actually be spent on public services.

The governor’s office, for instance, has requested ramping up air pollution enforcement to bring the Denver metro area into compliance with federal ozone standards. In many years, the 19 employees needed to enforce new permitting and compliance efforts would pay for themselves by generating as much as $2.4 million in new fees. But these particular fees aren’t exempt from the TABOR cap. And any new money the state brings in next year that isn’t TABOR-exempt will trigger an equal amount of taxpayer refunds, reducing the money that can be spent out of the general fund on other services.

“That might as well be a general fund expenditure because we’re just not in a place where we have the luxury of bringing in new revenue,” Moreno said.

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**Option 2: Exempt existing revenue from the cap.**

Another option is to convert existing revenue to enterprise funds, much like the legislature did a few years ago when it reclassified a state hospital fee in order to clear out more room to spend revenue under the TABOR cap.
The sheer size of the fee — around $600 million at the time — made it a high impact target for lawmakers seeking to create new spending capacity. Budget writers told The Sun there aren’t other fees currently subject to TABOR that would generate that much money. But Moreno said they are exploring whether they could convert something else to a TABOR-exempt enterprise fund: the 22 cent state gas tax, which generates around $660 million annually.

Legally, that’s a murkier proposition than converting the hospital fee, because the gas tax has long been labeled a tax, not a fee. But the line between tax and fee is blurry. Colorado’s hospital fee, for instance, is defined as a “bed tax” in many states.
And the state Supreme Court has historically given lawmakers a lot of leeway in making that distinction, as long as the money it generates is earmarked for a related purpose. Much like some of Colorado’s TABOR-exempt car registration fees, Colorado gas tax revenue funds highway construction.

It’s too early to say whether this will emerge as a legislative push next session, though. “It’s pretty early on” in the discussion, Moreno said.

**Option 3: Raise the cap by $200 million.**

Another possibility is to raise the TABOR cap to where it was before lawmakers struck a deal to lower it by $200 million in 2017. This idea first surfaced last year, but never got off the ground.

Legally, this one might be an easier sell than a gas tax overhaul. The thinking is, if lawmakers voluntarily lowered the cap, they should theoretically be able to reverse course without asking voters for permission.

But politically, this one might be even less likely to happen. It was already fraught, requiring Democrats to renege on a deal struck with Republicans just a few years ago. And now, they’d be attempting it just months after voters sent a clear message in Prop. CC that they wanted to keep their taxpayer refunds.
Option 4: Go back to voters.

This one is certain to happen sooner or later. The only question is what will be asked of voters -- and how much more receptive the 2020 electorate will be than those who cast ballots in the low-turnout affair of November 2019.

Outside groups are evaluating a variety of TABOR reforms, including outright repeal and more targeted changes, like a progressive income tax. Moreno says past legislative bills may resurface as well, like a Republican-led plan that would have asked voters to tie the TABOR growth formula to personal income rather than inflation.

Don’t expect much support from Republicans against the backdrop of a presidential election year. To victorious conservatives, the message from
voters in November was clear: leave TABOR alone. But to Democrats, Prop. CC’s defeat wasn’t a sign that they should stop trying to loosen its grip on state government.

“The voters who showed up in what was a very low turnout election said they wanted to keep their refund checks,” Hansen said. “That’s fine; that’s a data point. But I don’t take some broader philosophical conclusion from it. … I don’t think it takes away from the options that we’re looking at.”

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