

City tables lawsuit against state for 'Hold Harmless' repeal

Written by By Melinda Russell Sun Correspondent
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A lawsuit against the State of New Mexico was presented during a special meeting of the Gallup City Council by City Attorney George Kozeliski June 29. The action would seek to protect Gallup from the loss of revenues if the state of New Mexico does not change the current plan to phase out the hold harmless tax break.

The hold harmless tax break was created during Bill Richardson's term as governor. The first portion that allowed for abatement of taxes on food was enacted in 2004 and the second, relating to health care expenses was enacted in 2007. Losing the hold harmless status will be devastating to Gallup, according to local lawmakers.

The lawsuit presents two points of litigation. First, equal protection for individuals that live and work in Gallup. The legislature has passed a bill that extends the hold harmless clause for municipalities of 10,000 people and under.

The citizens of those communities are treated more favorably than those in larger communities, Kozeliski said.

The second point of contention is a constitutional challenge based on state law. When bonds are guaranteed by gross receipts, the state is not allowed to change any tax status that has been tied to the bonds. That is the case in Gallup.

"The State has, in effect, reduced our gross receipts," Kozeliski said.

Though the motion to go forward with the lawsuit was tabled, Councilor Allan Landavazo said this action will put the state on notice that the City of Gallup is ready to move forward if

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legislators do not take action to fix the current law.

"If it's not straightened out, that's the last straw and we've got the lawsuit ready to go," Landavazo said.

Gallup is slated to lose \$ 200,000 in 2015 due to the phase-out. The 17 year phase-out will cost the City of Gallup about \$1 million by 2020 and \$ 3 million per year by 2032 which is about 10 percent of the city's total budget.

Though Gallup is one of about a dozen cities that will be hurt by this action, Gallup is the only municipality that has plans to take action against the state.

"It's kind of every city for themselves," Kozeliski said.

Gallup has tried to enlist other cities to show a united front, but none have shown interest thus far.

Councilor Yogash Kumar says the city has time to make up for some of its lost revenues through economic development. He says that overall, the phase out will benefit the state. With the capital outlay funds recently allocated to Gallup, Kumar is hopeful that tax revenue will increase.

"I'm a little bit optimistic that we can overcome it," he said. "It is too soon to make a decision, at the end of the day."

There is a chance the state legislature will revise the current phase out of the Hold Harmless repeal to make the law fair to all citizens. Mayor Jackie McKinney says this is a serious issue for Gallup.

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"We're still hoping they will tweak the legislation," he said.

Alamagordo will be one of the hardest hit communities. They are slated to lose over 20 percent of their budget by the end of the phase out period. They are not planning to take legal action against the State "even though the issue is of grave concern to us," Alamagordo City Manager Jim Stahle said. "I'm crossing my fingers that our legislators will wake up and help us out."

Landavazo, speaking in general terms, said Gallup leaders fear that if they sue the state, legislators may look unfavorably on the city when it comes time to allocate capital outlay and other tax dollars.

But, he added that when state leaders take office, they accept an oath and promise to remain impartial in all decisions.

"We can't let the governor or anybody else hold us hostage," he said. "We have to make good decisions for our citizens."

The council will revisit the issue after the 2016 legislative session.