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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2022
 SPONSOR Roybal Caballero LAST UPDATED 2/4/2022 HB 156
 SHORT TITLE Possession of Large Capacity Gun Magazine SB _____
 ANALYST Rabin

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
\$0.0	\$1,500.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	At least \$23.4 thousand	At least \$33.1 thousand	At least \$56.6 thousand	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (NMAG)
 Sentencing Commission (NMSC)
 Department of Public Safety (DPS)

BILL SUMMARY

Synopsis of Bill

House Bill 156 makes it a new fourth-degree felony to “possess, use, manufacture, import, purchase, sell, loan, borrow or transfer a large capacity magazine” within New Mexico. Law enforcement officers, military service members, manufacturers attempting to sell such items to the government, historical institutions, residents of other states who transport a magazine into New Mexico for use exclusively in an established shooting competition, forensic laboratories and their employees, and businesses and their employees that operate armored vehicles are exempt from this prohibition.

A “large capacity magazine” is defined as “a magazine, box, drum, tube, feed strip or other container that is capable of holding more than fifteen rounds of ammunition to be fed continuously and directly into a semi-automatic firearm,” but does not include

- A feeding device that has been permanently altered so that it cannot accommodate more than fifteen rounds;
- An attached tubular device that is designed to accept, and capable of operating only with, .22 caliber rimfire ammunition;
- A tubular magazine that is contained in a lever-action firearm; or
- A feeding device that was manufactured or sold solely for use by a lever-action or bolt-action rifle or shotgun, by an antique firearm or by a firearm determined to be a curio or relic by the federal bureau of alcohol, tobacco, firearms and explosives.

HB156 appropriates \$1.5 million from the general fund to the Department of Public Safety to carry out the provisions of the bill.

The effective date of this bill is July 1, 2022.

FISCAL IMPLICATIONS

The appropriation of \$1.5 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY23 shall revert to the general fund. Although HB156 does not specify future appropriations, enforcement costs related to the bill will continue in future fiscal years, and subsidizing those costs in FY23 will likely create an expectation that such funding will be sustained in future fiscal years. As a result, this cost is scored as recurring.

It is not clear how the appropriation is intended to be spent or if any special enforcement operations would be necessary. DPS notes that gun magazine buyback programs, public service announcements, and destroying ammunition could incur costs in addition to regular enforcement operations to confiscate illegal magazines and weapons. However, creating new crimes imposes costs on many other governmental entities, including local police departments, county jails, courts, prosecutors, public defenders, and the Corrections Department (NMCD). If the intent of the appropriation is for DPS to reimburse or otherwise support these entities, that should be clarified.

Costs discussed below assume the appropriation is not used to reimburse other government entities, and costs incurred by those entities are considered as additional operating budget impacts.

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison that might result from this bill. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and long-term costs to the general fund. The Corrections Department reports the average cost to incarcerate a single inmate in FY21 was \$49.6 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$23.4 thousand per inmate per year across all facilities. By creating a new fourth-degree felony, this bill will likely increase the number of individuals incarcerated.

It is difficult to estimate how many individuals might be admitted to prison based on this proposed ban. While other states have enacted similar bans, those laws differ from the proposal in HB156 enough to make such comparisons difficult. Most significantly, HB156 does not provide an exception for individuals who already possess large-capacity magazines. Many other states' bans provide an exception in some or all such cases, and it is not clear how often bans that do not provide such exceptions are enforced on individuals for simply continuing to possess a large-capacity magazine. It seems likely this crime will most often be charged in conjunction with other crimes.

This analysis estimates the changes proposed by HB156 will impact at least one individual annually, resulting in additional incarceration costs of \$33.1 thousand per year. Based on average actual time served for individuals released from prison in FY21 whose highest charge was a fourth-degree felony (516 days), this analysis estimates the change will result in an annual cost of \$33.1 thousand per offender. These additional costs will begin to be realized in FY24 (with a cost of \$23.4 thousand), increasing to \$33.1 thousand the following year (as more individuals are incarcerated for violations of the ban established in this bill) and continuing at that level in future fiscal years.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials or increased costs to local law enforcement to investigate and arrest individuals for the new crime are not included in this analysis, as no specific cost estimates were provided to LFC by the potentially impacted entities.

SIGNIFICANT ISSUES

Both DPS and the Attorney General's Office note the proposed law will likely be subject to constitutional challenges under the United States and New Mexico constitutions. However, both agencies cite rulings that may indicate such a law would be upheld.

DPS notes a potential "loophole" in the law as proposed in HB156, which may not be the law's intent. The definition of "large capacity magazine," may be excluding firearms that hold more than 15 rounds in "an attached tubular device." DPS notes, "As written, it would still be theoretically legal, for example, to possess, sell, etc. a semi-automatic 22-caliber rifle or lever-action rifle of another caliber with an internal tube magazine that holds more than 15 rounds."

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