

possession of a machine gun or a machine gun attachment, along with large-capacity magazines, is outlawed. Beginning January 1, 2025, the importation, sale, manufacture, transfer or receipt of semi-automatic assault weapons and large capacity magazines (including devices such as “bump stocks,” which allow these firearms to fire at the rate of a fully automatic machine gun) are outlawed, with exceptions for certain semi-automatic handguns holding no more than 10 rounds of ammunition, shotguns with fixed capacity not to exceed 10 rounds, and other specified types of firearms. The act exempts the United States government and its departments and agencies, Indian nations, tribes and pueblos, the state, and political subdivisions from these bans, subject to certain conditions. The New Mexico Attorney General (NMAG), in consultation with DPS, shall prepare, maintain, and make available on its website a list of gas-operated semiautomatic firearms subject to the act by July 1, 2024, the manner in which large-capacity magazines and gas-operated semiautomatic firearms are to be marked, and the way a magazine may be permanently fixed to the firearm, device, or combination of parts to comply with the exclusions set forth in the act. DPS is assigned specific duties as well. NMAG’s list must be updated at least once every year before July 1. An owner or manufacturer of a gas-operated semiautomatic firearm may appeal the inclusion of a firearm on the list within 60 days of its listing pursuant to rules adopted by NMAG.

The act allows individuals to retain possession of firearms that would otherwise be banned while on their own or another’s private property closed to the public, on a licensed firearm dealer’s premises, while engaged in the legal use of a firearm at a licensed firing range or during a shooting competition, or while traveling with the unloaded firearm enclosed in a container. The firearm must have been lawfully manufactured and transferred prior to January 1, 2025, and certified by NMAG on a confidential system it develops, in consultation with DPS, by September 1, 2024.

In addition, the act allows nonresidents to transport within the state any unloaded firearm, device, or combination of parts of a firearm subject to the act’s provisions over a 24-hour period as long as those items are stored and not readily accessible from the passenger compartment. Nonresidents who move to the state in possession of any of these items must comply with the act, including completing and submitting a certification with NMAG within 60 days.

Violation of the act results in these penalties:

- Fourth-degree felony penalty for the importation, sale, manufacture, transfer, receipt or possession of a machine gun or machine gun attachment;
- Fourth-degree felony penalty for commission of or attempt to commit a felony offense while in possession of a gas-operated semiautomatic firearm or large-capacity ammunition feeding device; and
- Misdemeanor penalty for a violation of the act where the penalty is unspecified.

CS/HB137 contains a severability clause, so that if any part or application of the act is held invalid, the remainder or an application to other situations or persons remains in effect.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Both NMAG and the Administrative Office of the Courts (AOC) warned in their earlier analyses

that bills such as this substitute may result in litigation in New Mexico. As a result, increased operational costs for the NMAG may be anticipated. Based on LFC staff analysis, the one-time cost of defending a challenge to what is now CS/HB137 is estimated to be at least \$450 thousand to the NMAG. Additionally, the Department of Public Safety (DPS) has advised LFC staff that it may incur additional expenses in providing extra security personnel to the courts depending on threats that may be made at an estimated cost of \$5,500 per event.

NMAG advised, to perform the tasks assigned to it in CS/HB137, it will need highly specialized technical staff to ensure its listing of applicable weapons is up to date, given constant updates to firearms and accessories. It will require a ballistics and firearms expert on staff to handle its responsibilities under the act and to coordinate with DPS and the U.S. Bureau of Alcohol, Firearms and Explosives, at approximately \$115 thousand per year, plus benefits, plus an investigator at approximately \$85 thousand per year, plus benefits. The Law Offices of the Public Defender (LOPD) in its earlier analysis expressed concern over potential widespread noncompliance should CS/HB137 be enacted, leading to an unquantifiable increase in workload and expenses. LFC staff estimates this potential cost as indeterminate but minimal, which likely can be absorbed within its current budget.

In addition, this bill creates new crimes. Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. 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 jails, consequently increasing long-term costs to state and county general funds. NMCD reports the average cost to incarcerate a single inmate in FY22 was \$54.9 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 \$26.6 thousand per year across all facilities. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. CS/HB137 is anticipated to increase the number of incarcerated individuals.

This analysis estimates CS/HB137 will increase annual incarceration costs by at least \$26.6 thousand to the state, which costs remain constant over the next two years. The impact on counties is estimated to be \$38.4 thousand per year, which cost also remains constant over the next two years. Without additional available data, this analysis assumes the new crime of misdemeanor violation of the act will result in at least two additional people being admitted to county jail for that offense each year and at least one person being admitted to NMCD facilities for the fourth degree felony violation.

SIGNIFICANT ISSUES

DPS explained in its earlier analysis that assault weapons are generally high-powered semiautomatic firearms where each round has up to four times the muzzle velocity of a handgun round and inflicts greater damage to the human body than a round from a typical handgun. Further, DPS reported semiautomatic weapons can load and fire rounds much faster than manually operated firearms, and in combination with high-capacity magazines, they allow a shooter to fire more rounds over a short period without pausing to reload.

DPS reported that in its original form, HB137 mimics proposed federal legislation to decrease instances and severity of gun violence. Similarly, AOC advised in its earlier analysis that the federal legislation, introduced by Senators Heinrich and King, is aimed, according to media reports, at curbing fatalities from mass shooting incidents while maintaining Second Amendment protections. Yet NMAG, LOPD, and AOC expected the act would be subject to legal challenges under both the Second Amendment of the U.S. Constitution and Article 2, Section 6, of the Constitution of New Mexico.

NMAG advised that, based on the 2022 *Bruen* decision by the U.S. Supreme Court, the act may need to be found “consistent with this Nation’s historical tradition of firearm regulation” if it is found to address conduct covered by the plain text of the Second Amendment. Further, AOC reported the National Shooting Sports Foundation asserts the federal version of HB137 is clearly unconstitutional, citing a 2008 U.S. Supreme Court decision in *District of Columbia v. Heller* that entire classes of firearms cannot be banned from legal sale and possession by law-abiding citizens. LOPD also cited the *Heller* decision as the basis for critics’ challenges to the federal version of this bill. Additionally, NMAG commented that while similar statutes have been upheld in other states under their constitutional provisions governing firearms, the language of those provisions differs from that found in Article 2, Section 6, of New Mexico Constitution, which may require the application of a different analysis.

On the other hand, DPS contended, “By focusing on particularly dangerous weapons, this bill does not run afoul of the Second Amendment.” It cites recent litigation over a similar bill enacted in Illinois, in which the 7th U.S. Circuit of Appeals concluded that bill has a “strong likelihood” of being found constitutional, after which the U.S. Supreme Court declined to preliminarily enjoin the law, which may be interpreted as support for the lower court conclusion.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Numerous bills introduced in the 2024 legislative session relate to firearms in some way.

OTHER SUBSTANTIVE ISSUES

DPS reported an 18-year-old man used an assault rifle to shoot more than 100 rounds in Farmington during an incident in May 2023, killing three people and injuring six others.

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