

LFC Requester:	Daly, Marty
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute** X

Date 2/2/24
Bill No: HB 137sub

Sponsor: Rep. Andrea Romero
Short Title: Gas-Operated Semiauto
Firearms Exclusion Act

Agency Name and Code AOC
218
Number: _____
Person Writing Kathleen Sabo
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Related to HB 46, HB 47, HB 58, HB 78, HB 127, HB 129, HB 168, HB 183, HB 198, HM 27, SB 5, SB 69, SB 97, SB 204 and SJR 12, also dealing with firearms.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The House Judiciary Committee (HJC) Substitute for HB 137 enacts the “Gas-Operated Semiautomatic Firearms Exclusion Act (GOSFEA), within Chapter 30, Article 7 NMSA 1978, to prohibit, beginning on January 1, 2025, the importation, sale, manufacture, transfer, receipt or possession of gas-operated semiautomatic firearms. The substitute bill also prohibits large-capacity ammunition feeding devices manufactured after July 1, 2024, and devices that materially increase the rate of fire of a firearm or approximate the action or rate of fire of a machine gun, and prohibits machine guns and machine gun attachments. The HJC Substitute requires the Attorney General (AG) to list the gas-operated semiautomatic firearms subject to the provisions of the GOSFEA, and requires the certification of semiautomatic firearms. The substitute bill permits an owner or manufacturer of a gas-operated semiautomatic firearm to appeal the determination of inclusion of a firearm on the AG’s list within 60 days of the firearm being listed pursuant to rules promulgated by the AG. Rules are required to be adopted and promulgated as provided in the State Rules Act. The substitute bill requires the AG, no later than July 1, 2024, to publish the manner or manners in which a magazine may be permanently fixed to a firearm, device or combination of parts in compliance with the Act.

The HJC Substitute for HB 137 provides the following penalties:

- Fourth degree felony penalty for the importation, sale, manufacture, transfer, receipt or possession of a machine gun or machine gun attachment, with exceptions (Section 5)
- Misdemeanor penalty for a violation of the GOSFEA where a penalty is unspecified. (Section 9)
- Fourth degree felony for commission or attempt to commit, a felony offense while in possession of a gas-operated semiautomatic firearm or large-capacity ammunition feeding device in violation of the GOSFEA. (Section 9)

The substitute bill specifies the actions a nonresident may take within New Mexico with regard to the firearms and attachments regulated by the GOSFEA. (Section 8)

The HJC Substitute for HB 137 contains a severability clause, providing that if any part or

application of the GOSFEA is held invalid, the remainder or its application to other situations or persons shall not be affected. (Section 10)

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions as well as challenges to the constitutionality of the Gas-Operated Semiautomatic Firearms Exclusion Act, and challenges to the inclusion of particular firearms on the AG's list. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) On the federal level, in the winter of 2023, Sens. Heinrich and King introduced legislation enacting the Gas-Operated Semi-Automatic Firearms Exclusion Act (GOSAFE Act), aiming to

...regulate firearms based on the lethality of their internal mechanisms rather than on what the firearm looks like, to regulate the sale, transfer and manufacture of gas-operated semi-automatic firearms by making a list of prohibited firearms; preventing illegal modifications of legal firearms; mandating that future gas-operated designs are approved before manufacture and preventing illegal firearm self-assembly and manufacturing.

See *Heinrich introduces legislation aimed at curbing gun violence*, Nicole Maxwell, December 1, 2023 at <https://nmpoliticalreport.com/news/heinrich-introduces-legislation-aimed-at-curbing-gun-violence/> , and noting that the legislation is aimed at curbing fatalities from mass shooting incidents while maintaining Second Amendment Protections.

The National Shooting Sports Foundation (NSSF), however, rejects the GOSAFE Act, stating that it is clearly unconstitutional, as the U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that entire classes of firearms cannot be banned from legal sale and possession by law-abiding citizens. The NSSF also notes that the Centers for Disease Control and Prevention (CDC) found that a federal limit on magazine capacity had no appreciable effect on crime reduction during the 1994 Assault Weapons Ban. See *NSSF Rebukes Sens. King and Heinrich MSR Ban Bill*, November 30, 2023 at <https://www.nssf.org/articles/nssf-rebukes-sens-king-and-heinrich-msr-ban-bill/> .

- 2) It is to be expected that the GOSFEA will be subject to challenges under both the Second Amendment of the U.S. Constitution and Article 2, Section 6 of the Constitution of New Mexico.

In addition, and as the Office of the NM Attorney General pointed out in its analysis of 2023's HB 101 and its substitute, the court in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. ___ (2022), held that the government must demonstrate that the regulation being challenged is "consistent with this nation's tradition of firearm regulation," meaning, explained the New York Times, "that the constitutionality of modern gun control measures depends on whether the government can show that there were analogous laws during the 18th and 19th centuries." See *Supreme Court's Devotion*

to Gun Rights Faces a Challenging Test, Adam Liptak, November 6, 2023 at <https://www.nytimes.com/2023/11/06/us/politics/supreme-court-guns-second-amendment.html#:~:text=%E2%80%9CThe%20government%20must%20demonstrate%20that,the%2018th%20and%2019th%20centuries> . See the FIR for 2023's HB 101 and substitute at <https://www.nmlegis.gov/Sessions/23%20Regular/firs/HB0101.PDF> .

A chief difference between the original HB 137 and the HJC substitute is that the substitute bill permits an owner or manufacturer of a gas-operated semiautomatic firearm to appeal the determination of inclusion of a firearm on the AG's list within 60 days of the firearm being listed pursuant to rules promulgated by the AG. Rules are required to be adopted and promulgated as provided in the State Rules Act. Additionally, the substitute bill requires the AG, no later than July 1, 2024, to publish the manner or manners in which a magazine may be permanently fixed to a firearm, device or combination of parts in compliance with the Act.

3)

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS