

**CITY OF OAKLAND
BILL ANALYSIS**



Date: May 9, 2013

Bill Number: SB 47

Bill Author: Yee

DEPARTMENT INFORMATION

Contact: Claudia Burgos, District 5, 510-238-7051
cburgos@oaklandnet.com

RECOMMENDED POSITION: SUPPORT

Summary of the Bill:

Existing law generally prohibits, with certain exceptions, the possession, transfer or sale of an assault weapon. And under existing law, "assault weapon" means, among other things, a semiautomatic, centerfire rifle or a semi-automatic pistol that has the capacity to accept a detachable magazine and has any one of specified attributes, including, for rifles, a thumbhole stock, and for pistols, a second handgrip.

SB 47 would revise provisions to mean a semiautomatic, centerfire rifle or a semiautomatic pistol that does not have a fixed magazine but has any of those specified attributes and would clarify existing law by defining "fixed magazine" to mean an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action. **SB 47** would also give the California Department of Justice the authority to update and bring into compliance existing regulations.

Positive Factors for Oakland

As of May 5, 2013, we have had 33 homicides in the City of Oakland, the majority by way of firearms. According to our crime statistics, so far this year, we've had:

- 174 Aggravated Assaults involving a firearm
- 2 Assaults on a police officer involving a firearm
- 862 Robberies involving a firearm

On February 5, 2013, OPD conducted a search warrant on the 7800 block of Weld Street and confiscated two assault rifles, including a concealable weapon and nearly 500 rounds of ammunition were recovered.

On February 6, 2013 OPD served several narcotics and firearms related search warrants in the 1200 block of 30th Street and they recovered one assault rifle.

In January officers arrested a suspect and recovered a Colt DPMS Assault Rifle with a magazine that holds up to 100 rounds capable of piercing a bulletproof vest.

Given the level of gun violence in our City and the presence of assault weapons in our community, it is in the City's best interest to support this Senate Bill to further refine the definition of an assault weapon and to require registration of such weapons.

Negative Factors for Oakland: None.

A support position is recommended.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical (top priority for City lobbyist, city position required ASAP)
- Very Important (priority for City lobbyist, city position necessary)
- Somewhat Important (City position desirable if time and resources are available)
- Minimal or None (do not review with City Council, position not required)

Respectfully Submitted,
Councilmember Gallo,

SB 47 – YEE

ASSAULT WEAPONS

BACKGROUND

California has led the nation in prohibiting the ownership of military style, anti-personnel assault weapons. While California has some of the strictest gun control laws in the country, gun manufacturers are circumventing the state's assault weapon prohibition by exploiting a loophole inadvertently created by imprecise language in statute and regulation. Now these firearms are proliferating California once again. Their growing popularity and sales are quite troubling, since California has an assault weapon prohibition already on the books and the legal clones of these firearms are indistinguishable from their illegal counterparts.

For several years gun makers have manufactured assault weapon with a magazine locking device called the "bullet button," which requires a tool, which may include a tip of a bullet, a magnet, or even a glove, to disengage the magazine yet allow for the easy reloading of a weapon in a matter of seconds. Since a tool is used to disengage the ammunition feeding device, the firearm's magazine is not classified as "detachable" and the firearm in question is legal.

BILL SUMMARY

SB 47 would clarify existing law by defining "fixed magazine" in statute. This bill would also give the California Department of Justice (DOJ) the authority to update and bring into compliance existing regulations. This bill seeks to reestablish the original intent of the assault weapon ban by slowing down the process of easily reloading a firearm. Furthermore, identification and enforcement of a complex set of gun laws subjects the Assault Weapon Ban to judicial review (Haynie/Richards v. Harris), and may result in the law being ruled unconstitutional, vague and unenforceable. Absent this bill, the assault weapon ban is effectively subverted, severely weakened and vulnerable to judicial review.

EXISTING LAW

Existing law prohibits, with certain exceptions, the possession, transfer or sale of an assault weapon. A category 3 assault weapon is defined as a "semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine" in combination with any affixed accessories, such as a telescoping stock, pistol grip, flash suppressor, or forward grip. Most AR-15 or AK-47 type firearms sold in the state would be classified as an assault weapon if it weren't for a loophole in an unauthorized DOJ regulation that defined a detachable magazine as "any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool." (11 CCR § 5469 (a).) Consequentially, if a magazine release requires a tool to disengage the ammunition feeding device, then the magazine is not detachable and the firearm in question is legal.

SUPPORT

California Brady Campaign
Women Against Gun Violence

OPPOSITION

AMENDED IN SENATE MARCH 20, 2013
AMENDED IN SENATE JANUARY 24, 2013

SENATE BILL

No. 47

Introduced by Senator Yee
(Coauthors: Senators ~~De León~~ *De León, Leno*, and Steinberg)
(~~Coauthor~~ *Coauthors*: Assembly-Member-Dickinson *Members Bloom, Dickinson, and Ting*)

December 18, 2012

An act to amend Sections 30515 and 30900 of, and to add Section 30680 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 47, as amended, Yee. Firearms: assault weapons.

(1) Existing law generally prohibits the possession or transfer of assault weapons, except for the sale, purchase, importation, or possession of assault weapons by specified individuals, including law enforcement officers. Under existing law, "assault weapon" means, among other things, a semiautomatic, centerfire rifle or a semiautomatic pistol that has the capacity to accept a detachable magazine and has any one of specified attributes, including, for rifles, a thumbhole stock, and for pistols, a second handgrip.

This bill would revise these provisions to mean a semiautomatic, centerfire rifle or a semiautomatic pistol that does not have a fixed magazine but has any one of those specified attributes.

This bill would also define "fixed magazine" to mean an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

By expanding the definition of an existing crime, the bill would impose a state-mandated local program.

(2) Existing law requires that any person who, within this state, possesses any ~~.50-BMG rifle, an assault weapon,~~ except as otherwise provided, be punished by a fine of \$1,000, imprisonment in a county jail ~~as a felony or for a period not to exceed one year, or by both that fine and imprisonment in a county jail.~~

This bill would ~~exclude exempt~~ from those provisions ~~punishment~~ a person who possessed an assault weapon ~~under that provision~~ prior to January 1, 2014, and until July 1, 2014, if specified requirements are met.

(3) Existing law requires that, with specified exceptions, any person who, prior to January 1, 2001, lawfully possessed an assault weapon prior to the date it was defined as an assault weapon, and which was not specified as an assault weapon at the time of lawful possession, register the firearm with the Department of Justice. *Existing law permits the Department of Justice to charge a fee for registration of up to \$20 per person but not to exceed the actual processing costs of the department. Existing law, after the department establishes fees sufficient to reimburse the department for processing costs, requires fees charged to increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act. Existing law requires those fees to be deposited into the Dealers' Record of Sale Special Account. Existing law, the Administrative Procedure Act, establishes the requirements for the adoption, publication, review, and implementation of regulations by state agencies.*

This bill would require that any person who, from January 1, 2001, to December 31, 2013, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined, and including those weapons with an ammunition feeding device that can be removed readily from the firearm with the use of a tool, register the firearm before July 1, 2014, with the Department of Justice. *This bill would permit the department to increase the \$20 registration fee as long as it does not exceed the reasonable processing costs of the department. This bill would also require registrations to be submitted electronically via the Internet utilizing a public-facing application made available by the department. This bill would require the registration to contain specified information, including, but not limited to, a description of the firearm that identifies it uniquely and specified information about the registrant.*

This bill would permit the department to charge a fee of up to \$15 per person for registration through the Internet, not to exceed the reasonable processing costs of the department to be paid and deposited, as specified. This bill would require the department to establish procedures for the purpose of carrying out those provisions and would exempt them from the Administrative Procedure Act. This bill would also make technical and conforming changes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 30515 of the Penal Code is amended to
2 read:

3 30515. (a) Notwithstanding Section 30510, "assault weapon"
4 also means any of the following:

5 (1) A semiautomatic, centerfire rifle that does not have a fixed
6 magazine but has any one of the following:

7 (A) A pistol grip that protrudes conspicuously beneath the action
8 of the weapon.

9 (B) A thumbhole stock.

10 (C) A folding or telescoping stock.

11 (D) A grenade launcher or flare launcher

12 (E) A flash suppressor.

13 (F) A forward pistol grip.

14 (2) A semiautomatic, centerfire rifle that has a fixed magazine
15 with the capacity to accept more than 10 rounds.

16 (3) A semiautomatic, centerfire rifle that has an overall length
17 of less than 30 inches.

18 (4) A semiautomatic pistol that does not have a fixed magazine
19 but has any one of the following:

20 (A) A threaded barrel, capable of accepting a flash suppressor,
21 forward handgrip, or silencer

22 (B) A second handgrip.

1 (C) A shroud that is attached to, or partially or completely
 2 encircles, the barrel that allows the bearer to fire the weapon
 3 without burning the bearer's hand, except a slide that encloses the
 4 barrel.

5 (D) The capacity to accept a detachable magazine at some
 6 location outside of the pistol grip.

7 (5) A semiautomatic pistol with a fixed magazine that has the
 8 capacity to accept more than 10 rounds.

9 (6) A semiautomatic shotgun that has both of the following:

10 (A) A folding or telescoping stock.

11 (B) A pistol grip that protrudes conspicuously beneath the action
 12 of the weapon, thumbhole stock, or vertical handgrip.

13 (7) A semiautomatic shotgun that has the ability to accept a
 14 detachable magazine.

15 (8) Any shotgun with a revolving cylinder.

16 (b) For purposes of this section, "fixed magazine" means an
 17 ammunition feeding device contained in, or permanently attached
 18 to, a firearm in such a manner that the device cannot be removed
 19 without disassembly of the firearm action.

20 (c) The Legislature finds a significant public purpose in
 21 exempting from the definition of "assault weapon" pistols that are
 22 designed expressly for use in Olympic target shooting events.
 23 Therefore, those pistols that are sanctioned by the International
 24 Olympic Committee and by USA Shooting, the national governing
 25 body for international shooting competition in the United States,
 26 and that were used for Olympic target shooting purposes as of
 27 January 1, 2001, and that would otherwise fall within the definition
 28 of "assault weapon" pursuant to this section are exempt, as
 29 provided in subdivision (d).

30 (d) "Assault weapon" does not include either of the following:

31 (1) Any antique firearm.

32 (2) Any of the following pistols, because they are consistent
 33 with the significant public purpose expressed in subdivision (c):

34

35 MANUFACTURER	MODEL	CALIBER
36 BENELLI	MP90	.22LR
37 BENELLI	MP90	.32 S&W LONG
38 BENELLI	MP95	.22LR
39 BENELLI	MP95	.32 S&W LONG
40 BENELLI	MP95	.32 S&W LONG

1	HAMMERLI	280	.22LR
2	HAMMERLI	280	.32 S&W LONG
3	HAMMERLI	SP20	.22LR
4	HAMMERLI	SP20	.32 S&W LONG
5	PARDINI	GPO	.22 SHORT
6	PARDINI	GP-SCHUMANN	.22 SHORT
7	PARDINI	HP	.32 S&W LONG
8	PARDINI	MP	.32 S&W LONG
9	PARDINI	SP	.22LR
10	PARDINI	SPE	.22LR
11	WALTHER	GSP	.22LR
12	WALTHER	GSP	.32 S&W LONG
13	WALTHER	OSP	.22 SHORT
14	WALTHER	OSP-2000	.22 SHORT

15

16 (3) The Department of Justice shall create a program that is
 17 consistent with the purposes stated in subdivision (c) to exempt
 18 new models of competitive pistols that would otherwise fall within
 19 the definition of “assault weapon” pursuant to this section from
 20 being classified as an assault weapon. The exempt competitive
 21 pistols may be based on recommendations by USA Shooting
 22 consistent with the regulations contained in the USA Shooting
 23 Official Rules or may be based on the recommendation or rules
 24 of any other organization that the department deems relevant.

25 SEC. 2. Section 30680 is added to the Penal Code, to read:

26 30680. Notwithstanding the meaning of “assault weapon” under
 27 Section 30515, as amended by the act that added this section,
 28 ~~Section 30610 shall not apply to the possession of any person who~~
 29 ~~possessed an assault weapon by a person who initially possessed~~
 30 ~~the assault weapon prior to July 1, 2014, January 1, 2014, is exempt~~
 31 ~~from punishment pursuant to Section 30605 until July 1, 2014, if~~
 32 all of the following are applicable:

33 (a) During the person’s possession, the person was eligible to
 34 register that assault weapon pursuant to subdivision (c) of Section
 35 30900.

36 (b) The person lawfully possessed that assault weapon on
 37 January 1, 2014.

38 ~~(c) During the person’s possession, the person was otherwise~~
 39 ~~in compliance with the then-applicable version of former Chapter~~

1 ~~2-3 (commencing with Section 12275) of Title 2 of Part 4 of this~~
2 ~~chapter, as the case may be.~~

3 SEC. 3. Section 30900 of the Penal Code is amended to read:

4 30900. (a) (1) Any person who, prior to June 1, 1989, lawfully
5 possessed an assault weapon, as defined in former Section 12276,
6 as added by Section 3 of Chapter 19 of the Statutes of 1989, shall
7 register the firearm by January 1, 1991, and any person who
8 lawfully possessed an assault weapon prior to the date it was
9 specified as an assault weapon pursuant to former Section 12276.5,
10 as added by Section 3 of Chapter 19 of the Statutes of 1989 or as
11 amended by Section 1 of Chapter 874 of the Statutes of 1990 or
12 Section 3 of Chapter 954 of the Statutes of 1991, shall register the
13 firearm within 90 days with the Department of Justice pursuant to
14 those procedures that the department may establish.

15 (b)

16 (2) Except as provided in Section 30600, any person who
17 lawfully possessed an assault weapon prior to the date it was
18 defined as an assault weapon pursuant to former Section 12276.1,
19 as it read in Section 7 of Chapter 129 of the Statutes of 1999, and
20 which was not specified as an assault weapon under former Section
21 12276, as added by Section 3 of Chapter 19 of the Statutes of 1989
22 or as amended at any time before January 1, 2001, or former
23 Section 12276.5, as added by Section 3 of Chapter 19 of the
24 Statutes of 1989 or as amended at any time before January 1, 2001,
25 shall register the firearm by January 1, 2001, with the department
26 pursuant to those procedures that the department may establish.

27 ~~(c) Any person who, from January 1, 2001, to December 31,~~
28 ~~2013, inclusive, lawfully possessed an assault weapon that does~~
29 ~~not have a fixed magazine, as defined in Section 30515, and~~
30 ~~including those weapons with an ammunition-feeding device that~~
31 ~~can be removed readily from the firearm with the use of a tool,~~
32 ~~shall register the firearm before July 1, 2014, with the department~~
33 ~~pursuant to those procedures that the department may establish.~~

34 (d)

35 (3) The registration shall contain a description of the firearm
36 that identifies it uniquely, including all identification marks, the
37 full name, address, date of birth, and thumbprint of the owner, and
38 any other information that the department may deem appropriate.

39 (e)

1 (4) The department may charge a fee for registration of up to
2 twenty dollars (\$20) per person but not to exceed the actual
3 reasonable processing costs of the department. After the
4 department establishes fees sufficient to reimburse the department
5 for processing costs, fees charged shall increase at a rate not to
6 exceed the legislatively approved annual cost-of-living adjustment
7 for the department's budget or as otherwise increased through the
8 Budget Act but not to exceed the actual reasonable processing
9 costs of the department. The fees shall be deposited into the
10 Dealers' Record of Sale Special Account.

11 (b) (1) Any person who, from January 1, 2001, to December
12 31, 2013, inclusive, lawfully possessed an assault weapon that
13 does not have a fixed magazine, as defined in Section 30515,
14 including those weapons with an ammunition feeding device that
15 can be removed readily from the firearm with the use of a tool,
16 shall register the firearm before July 1, 2014, with the department
17 pursuant to those procedures that the department may establish.

18 (2) Registrations shall be submitted electronically via the
19 Internet utilizing a public-facing application made available by
20 the department.

21 (3) The registration shall contain a description of the firearm
22 that identifies it uniquely, including all identification marks, the
23 date the firearm was acquired, the name and address of the
24 individual from whom, or business from which, the firearm was
25 acquired, as well as the registrant's full name, address, telephone
26 number, date of birth, sex, height, weight, eye color, hair color,
27 and California driver's license number or California identification
28 card number

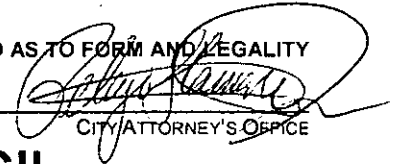
29 (4) The department may charge a fee of up to fifteen dollars
30 (\$15) per person but not to exceed the reasonable processing costs
31 of the department. The fee shall be paid by debit or credit card at
32 the time that the electronic registration is submitted to the
33 department. The fee shall be deposited in the Dealers' Record of
34 Sale Special Account.

35 (5) The department shall establish procedures for the purpose
36 of carrying out this subdivision. These procedures shall be exempt
37 from the Administrative Procedure Act.

38 SEC. 4. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O



CITY ATTORNEY'S OFFICE

2013 MAY -9 PM 5: 08

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember Noel Gallo

RESOLUTION IN SUPPORT OF SENATE BILL 47(YEE) REGARDING ASSUALT WEAPONS WHICH SEEKS TO (1) REVISE THE STATEWIDE DEFINITION OF "ASSUALT WEAPON" TO INCLUDE ALL SEMIAUTO-MATIC PISTOLS AND SEMIAUTOMATIC CENTERFIRE RIFLES WHICH HAVE ENUMERATED FEATURES, BUT DO NOT HAVE A FIXED AMMUNITION MAGAZINE, AND (2) REQUIRE REGISTRATION WITH THE DEPARTMENT OF JUSTICE OF ASSUALT WEAPONS FITTING THE REVISED DEFINITION.

WHEREAS, existing law generally prohibits, with certain exceptions, the possession, transfer or sale of an assault weapon; and

WHEREAS, under existing law, "assault weapon" means, among other things, a semiautomatic, center-fire rife or a semi-automatic pistol that has the capacity to accept a detachable magazine and has any one of specified attributes, including, for rifles, a thumbhole stock, and for pistols, a second handgrip; and

WHEREAS, SB 47 would revise provisions to include a semiautomatic, centerfire rifle or a semiautomatic pistol that does not have a fixed magazine but has any of those specified attributes; and

WHEREAS, SB 47 would also clarify existing law by defining "fixed magazine" to mean an ammunition feeding devise contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action and would give the California Department of Justice the authority to update and bring into compliance existing regulations; and

WHEREAS, SB 47 seeks to reestablish the original intent of the assault weapon ban by slowing down the process of easily reloading a firearm; and

WHEREAS, SB 47 will continue to make California the leader in gun control laws and will eliminate the ability of gun makers to manufacture assault weapons with a magazine locking device known as a "bullet button," which allows for the easy reloading of a weapon in a matter of seconds; and

WHEREAS, as of May 5, 2013, we have had 33 homicides in the City of Oakland, the majority by way of firearms; and

WHEREAS, so far this year Oakland has had 86 Aggravated Assaults involving a firearm, 2 Assaults on a police officer involving a firearm, 442 Robberies involving a firearm; and

WHEREAS, given the level of gun violence in our City and the presence of assault weapons in our community, it is in the City's best interest to support Senate Bill 47 to further refine the definition of an assault weapon and to require registration of such weapons; now therefore be it

RESOLVED that the Oakland City Council supports California Senate Bill 47 and encourages the California Legislature to accept it; and be it

FURTHER RESOLVED: That the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2013

PASSED BY THE FOLLOWING VOTE:

**AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID,
SCHAAF AND PRESIDENT KERNIGHAN**

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California