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FISCAL IMPACT REPORT

SPONSOR Duhigg **LAST UPDATED** _____
ORIGINAL DATE 2/6/24
SHORT TITLE Cannabis Compliance Bureau **BILL NUMBER** Senate Bill 274
ANALYST Anderson

APPROPRIATION* (dollars in thousands)

| FY24 | FY25 | Recurring or Nonrecurring | Fund Affected |
|------|---------|---------------------------|---------------|
| | \$325.0 | Nonrecurring | General Fund |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

| Type | FY24 | FY25 | FY26 | FY27 | FY28 | Recurring or Nonrecurring | Fund Affected |
|------|--------------------------------|--------------|--------------|--------------|--------------|---------------------------|-------------------|
| RLD | Indeterminate but minimal gain | Up to \$10.0 | Up to \$10.0 | Up to \$10.0 | Up to \$10.0 | Recurring | Other state funds |

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| Agency/Program | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|---------|---------|---------|-------------------|---------------------------|-------------------|
| RLD CCD | \$325.0 | \$325.0 | \$325.0 | \$975.0 | Recurring | Other state funds |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to: HB2, HB64, HB65, HB66, HB128, HB226, HB239, and SB6

Sources of Information

LFC Files

Agency Analysis Received From
 Regulation Licensing Department (RLD)
 Department of Public Safety (DPS)
 Attorney General (NMAG)
 Administrative Office of the Courts (AOC)
 Administrative Hearings Office (AHO)

Agency Analysis was Solicited but Not Received From
Department of Agriculture (NMDA)

Agency Declined to Respond
Department of Environment (NMED)

SUMMARY

Synopsis of Senate Bill 274

Senate Bill 274 (SB274) creates a new section within Section 9-16-1 NMSA 1978, the Regulation and Licensing Department Act, creating a cannabis compliance bureau in statue at the Regulation and Licensing Department (RLD) Office of the Superintendent and provides an appropriation. SB 274 provides that a compliance inspector has the same power as other law enforcement officers, including the power to undertake a lawful, warrantless search and seizure and the power to arrest someone for trafficking illegal cannabis. The bill requires the bureau to investigate alleged or suspected violations of the Cannabis Regulation Act (CRA) as directed by the Cannabis Control Division (CCD) or the RLD superintendent and permits the bureau to investigate on its own initiative, reporting its findings to the division and superintendent.

SB274 enacts a new section of the Cannabis Regulation Act to permit the division to carry out announced or unannounced inspections, respond to tips or allegations of wrongdoing, or initiate an investigation on the division's own initiative of an alleged or suspected violations of the CRA. Under SB274, the CCD of RLD is required to refer possible criminal violations to the bureau and to assist the bureau in the investigation and carrying out of inspections. The division also may issue an administrative hold on the movement of cannabis products that are or are suspected of being adulterated or dangerously or fraudulently misbranded.

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

The appropriation of \$325 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall revert to the general fund. The amount is appropriated from general fund to RLD to create a compliance bureau for costs associated with staffing, office space, furnishings, equipment, and supplies.

After an administrative hearing pursuant to the Uniform Licensing Act, the CCD may take disciplinary action against a licensee, including imposition of an administrative penalty not to exceed \$10 thousand. The Administrative Hearings Office (AHO) responded it does not anticipate a fiscal impact from the bill since it does not specifically list the office as the agency responsible for providing hearing officers or conducting hearings. Similarly, the Administrative Hearings Office Act does not specify RLD hearings as statutorily required hearings, so AHO does not have specific statutory jurisdiction over the potential cases. AHO further responded:

To the extent the new bureau might require hearing officer assistance from AHO, such work could be conducted pursuant to an MOU if AHO has sufficient hearing officer staff

available. In general, AHO charges a rate of \$125 per hour to conduct other agency hearings under an MOU.

Based on prior administrative hearings conducted by AHO for other state agencies under MOUs, a typical case that requires a lengthy review of the record (but not necessarily a lengthy hearing) and a brief written decision would cost the administrative agency approximately \$1500 (initial referral fee for staff time to open file, plus about 10 hours of hearing officer work, including file review, research, hearing preparation, conducting the hearing, completing decision, and ensuring a complete record proper). Revenue generated from conducting other agency hearings supports AHO's personnel compensation costs. However, AHO is currently near its staffing capacity limit in all the various hearing programs where it conducts hearings and depending on the volume of hearings may have limitations on its ability to assist.

SIGNIFICANT ISSUES

Costs for personnel and employee benefits, office space, furnishings, equipment, and supplies are considered recurring costs which will continually impact RLD's operating budget. The CCD pays compliance officers between \$72 thousand and \$83.8 thousand annually, while DPS pays compliance officers between nearly \$70 thousand and \$90 thousand annually. The RLD Securities Division, which has 10 special agent FTE, pays between \$76.9 and \$113 thousand annually. A nonrecurring appropriation of \$325 thousand will not be enough to support the new bureau.

RLD responded the CCD would need to hire 2 FTE to begin the process of carrying out new responsibilities for the bureau, special agents, and projects salaries at a combined \$322.4 thousand annually. RLD stated the appropriation would cover fiscal needs for FY25 only and expects additional special agents will be needed in the future to fully carry out duties of the new bureau. RLD expects to employ special agents in future years to fully carry out the duties and responsibilities in carrying out embargos and seizures of illegal cannabis products, a need it plans to address in future annual budget requests. RLD said it anticipates the need for a total of 11 special agent FTE, to fully staff and carry out responsibilities assigned to the new compliance bureau created by SB274. LFC estimates the amount for 11 additional special agent FTE to be between \$845.9 thousand and \$1 million. The House Appropriations and Finance Committee substitute for the General Appropriation Act of 2024 contains \$7.5 million in funding to the CCD, \$3.5 million of which is general fund, and includes a \$2.5 million transfer to the Department of Health to fund the medical cannabis program.

Neither the bill nor agency analysis accounts for the potential leasing costs for fleet vehicles for the bureau. For FY24, the General Services Department (GSD) lists standard lease costs, and depending on the vehicle class, a standard lease ranges anywhere from \$365 to \$550 per month, per vehicle. As of December 2023, RLD reported spending all but \$99.5 thousand of a \$785 thousand special appropriation received for FY24. With six months remaining in the fiscal year, the agency will likely spend the remaining amount for another vehicle needed for both cannabis compliance and construction inspections it conducts statewide.

SB274 proposes language that calls for destruction of condemned products “at the licensee’s expense” but this could be clarified as to what exactly those expenses include and how and if any recovered money will be distributed to any “cooperating” agencies.

The Attorney General (NMAG) expressed the need for a reference to the selection process for special agent investigators, the training that would be required, disciplinary actions against the investigators for unlawful conduct, or authority of the division to create rules governing any of these issues. NMAG said it could be beneficial to outline additional powers for the division or the bureau to have the ability to create rules governing the many different aspects of the investigators and their duties. It further responded:

Should the requirement of Law Enforcement Officers remain in the bill to be investigators, the training requirements of the Law Enforcement Officers would likely need to be addressed by the New Mexico Law Enforcement Trainings and Standards Council for satisfactory completion.

ADMINISTRATIVE IMPLICATIONS

For FY25, the Cannabis Control Division (CCD) proposed to discontinue its annual, recurring transfer of \$2.5 million from other state funds to the Department of Health (DOH) from cannabis licensing fees for the operations of the medical cannabis program, advocating the amount be appropriated separately for DOH’s annual budget. RLD insisted the memorandum of understanding for the \$2.5 million was intended as a one-time transfer to support DOH’s program when the CRA was initially passed. If RLD had been recommended to keep a full or partial amount of \$2.5 million from other state funds, funding could be proportionately increased in the DOH operating budget, possibly from general fund revenues.

DPS replied it may assist in supporting special agents in the newly established bureau while conducting investigations or executing warrants or multiple arrests. DPS supports RLD having law enforcement capabilities, saying the new bureau will greatly assist with deterring the illicit cannabis market within the state and help ensure a regulated cannabis market.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

At its inception in June of FY22, the Cannabis Control Division (CCD) at the Regulation and Licensing Department (RLD) was operating with 12 of 15 FTE. By August of FY24, the division more than doubled in size, expanding to 36 FTE, 23 of which are filled. At least two of CCD’s positions process licensing while 14 positions are compliance officers. The CCD also hosts two GovEx classified deputy director positions, unfilled, with salaries and benefits of \$133 thousand each. For FY24, the Department of Public Safety received a nonrecurring \$500 thousand for enforcement projects related to fentanyl, heroin, and illegal cannabis through FY26. In the General Appropriation Act of 2023, the state funded nearly \$4.8 million in general fund for adult use cannabis compliance. This includes \$491.3 thousand to the Department of Environment for hemp and cannabis permitting, monitoring, and enforcement activities and over \$2.7 million to fund the Cannabis Control Division (CCD) at the Regulation and Licensing Department (RLD).

The Administrative Office of the Courts also received a nonrecurring \$500 thousand in FY23 for the expungement of arrest and conviction records for certain cannabis-related offenses which

was extended through fiscal year 2024.

HB64, Cannabis Packaging Requirements, contains no appropriation and amends Section 26-2C-17 NMSA 1978 of the Cannabis Regulation Act (CRA) to provide language concerning new requirements for allowable and prohibited types of cannabis product packaging and labeling to be enforced by the CCD of RLD.

HB65, Cannabis Crime Reasonable Suspicion, amends the CRA to remove limitations on what may constitute reasonable suspicion of a crime involving cannabis and declares an emergency.

HB66, Cannabis Delinquency Act, amends the CRA to include cannabis use, possession, and production by a minor a delinquent act.

HB128, Cannabis Regulation Changes, amends the CRA definitions, licensing provisions, amends license denials and disciplinary actions, adds a section for criminal background checks, removes initial application and renewal fees for licenses, requires collegiate education course offerings be registered with the CCD, removes requirement for cannabis packaging to be compostable while strengthening language to restrict packaging and labeling designed to appeal to children, and clarifies criminal penalties for trafficking cannabis products. The bill also provides authority to CCD to issue administrative holds and embargoes to seize suspected illicit product. Finally, the bill removes the delayed repeal on RLD to allow the agency to continue to set a maximum cannabis plant count in perpetuity.

SJC Committee Substitute for SB6, Cannabis Regulation Changes, also amends the CRA in many of the same areas as HB128, but conflicts with HB128 in a number of provisions, including the removal of the legislator licensing limitation, the prohibition on drive-up windows, the changes in felony classification of cannabis trafficking offenses, the absence of authority to conduct enforcement actions involving embargo and seizure, and HB128's increase in plant count limits in the definition of "cannabis producer microbusiness."

HB226, Cannabis Licensure Background Checks, proposes to amend the CRA relating to criminal history and background checks as a condition of eligibility for licensure.

HB239, Cannabis as Prison Contraband, seeks to include cannabis, cannabis extract, and cannabis products in the list of prohibited contraband.

TECHNICAL ISSUES

RLD states the position compliance inspectors should be termed special agents for consistency with positions at the Securities Division and at the Board of Pharmacy.

DPS responded:

SB274 would benefit from definitions of the terms of "administrative hold," "embargo", "recall order". DPS assumes that a "seizure" of cannabis would be pursuant to a search warrant, but SB274 is not clear on this point. Section 2 G. of SB274 provides that the Cannabis Compliance Bureau will "give written notice to the licensee of the grounds for the seizure." DPS does not know if the Legislature intends not to give written notice to the licensee of the ground for the "embargoes," also discussed earlier in that paragraph,

or if the omission of a reference to written notice for the embargoes is an oversight. Subsection H. of Section 2 provides that neither the Cannabis Control Division nor the Compliance Bureau shall be required to “care for” embargoed or seized cannabis products. DPS assumes the reference is to growing plants.

NMAG expressed concerns about the creation of criminal penalties within the proposed language could be outside the scope of the CCD and new bureau and need to be addressed in criminal statute. SB274 proposes language that where a person intentionally, knowingly, or recklessly removes, conceals, destroys, or disposes of a cannabis product subject to an administrative hold or embargo is guilty of a fourth (4th) degree felony.

The Administrative Hearings Office (AHO) responded:

The bill’s hearing provision relating to challenging an embargo or seizure lacks specificity as to the applicability of rules of evidence, rules of procedure, qualifications of hearing officer, assignment of hearing officer, or the nature of decision.

OTHER SUBSTANTIVE ISSUES

On Section 1 C. reference to compliance inspectors as having “the same power as other law enforcement officers, including the power to undertake a lawful warrantless search and seizure” DPS is concerned that may “sending the wrong message” to future inspectors as well as to the industry:

While the law recognizes several exceptions to the requirement of obtaining a warrant prior to conducting a search, the presumption remains that those are “exceptions” and that the rule is that a search will be preceded by a warrant. If the compliance inspectors are going to be used to conduct routine regulatory inspections in addition to investigation of possible criminal activity, the sponsors might want to state this dual role and reference the fact that the compliance inspectors may apply for investigative regulatory search warrants in addition to search warrants requested because the inspector has probable cause to believe criminal activity has transpired. See *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 534 (1967) (recognizing the constitutionality of the issuance of a search warrant to inspect premises without probable cause to believe that a particular dwelling contained violations of the minimum standards prescribed by the housing code being enforced and that “[i]n determining whether a particular inspection is reasonable - and thus in determining whether there is probable cause to issue a warrant for that inspection – the need for the inspection must be weighed in terms of these reasonable goals of code enforcement.”); *Wilson Corp. v. State ex rel Udall*, 1996-NMCA-049 (“Probable cause for an administrative search exists “[i]f a valid public interest justifies the intrusion contemplated.”)

ALTERNATIVES

RLD has extensive knowledge and experience in conducting administrative hearings and possibly has hearing rules that could quickly be adopted for hearings involving embargoed and seized cannabis products.