

<b>LFC Requester:</b>	<b>GINGER ANDERSON</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{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: Date 2/4/24  
**Original**     **Amendment**        **Bill No:** 274  
**Correction**     **Substitute**   

**Sponsor:** Sen. Katy M. Duhigg    **Agency Name and Code**    Administrative Hearings Office  
**Short**    Cannabis Compliance Bureau    **Number:**    (340)  
**Title:**    \_\_\_\_\_    **Person Writing**    Brian VanDenzen  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0	NA	NA

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: This bill creates a new section of the Regulation and Licensing Department Act, establishing the Cannabis Compliance Bureau within that agency, under the supervision of the Superintendent of the Regulation and Licensing Department. The office shall employ compliance inspectors—certified law enforcement officers with law enforcements powers—to investigate and enforce the laws of the cannabis control division.

Under the bill, the bureau can carry out announced or unannounced inspections, investigate reports of non-compliance, and place administrative holds on suspect cannabis products. The bureau can embargo or seize illegal cannabis products or the premise where such illegal products are produced, manufactured or stored pursuant to a warrant. The bureau can further petition a district court of injunctive or equitable relief, among other specified enforcement actions.

When the bureau embargoes or seizes cannabis products or premises, it must provide written notification and grounds for seizure to the licensee. The licensee of embargoed/seized product/premise may request an administrative hearing within ten calendar days. The hearing shall occur before a hearing officer as provided by rule. The final agency decision may be appealed pursuant to existing statute for appeal of final agency decisions.

If the embargoed product is illegal, adulterated, dangerously or fraudulently misbranded, the bureau can seek a condemnation order from the district court, which if granted, will require the licensee to pay for the bureau’s destruction of the product.

The department of agriculture, department of environment, and other state agencies with relevant expertise shall cooperate with the division and the compliance bureau upon request.

The bill creates a 4<sup>th</sup> degree felony for any person intentionally, knowingly, or recklessly removes, conceals, destroys or disposes an embargoed or admin. hold cannabis product.

The bill allows the division to take other disciplinary action under the uniform license act.

**FISCAL IMPLICATIONS**

Since the bill does not specifically list the Administrative Hearings Office (AHO) as the agency responsible for providing hearing officers or conducting hearings, and similarly the

Administrative Hearings Office Act does not specify RLD hearings as statutorily required hearings, AHO anticipates no fiscal impact as it does not have specific statutory jurisdiction over these potential cases.

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**

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 (recommended decision to RLD superintendent or final agency decision and order). The hearing provision does specify that the hearing officer is assigned by rule, which may allow the bureau to promulgate hearing rules, but also seems specifically tied to the hearing officer rather than the general hearing process. In another section of the bill, there is a reference to the Uniform Licensing Act (ULA) for imposition of discipline. The ULA has robust hearing provisions and procedures. If that reference to ULA later in the act intends to apply to the entire act, then the absence of specific hearing procedures informs the embargoed and seized product hearings would most be remedied under the ULA hearing provisions (although the ULA largely deals with professional boards, who accept reports from hearing officers but make the final decision collectively as a board, which does not appear to be the structure of this new bureau at RLD). Moreover, RLD has extensive knowledge and experience in conducting administrative hearings and presumably has hearing rules that could quickly be adopted for hearings involving embargoed and seized cannabis products.

### **PERFORMANCE IMPLICATIONS**

None for AHO.

### **ADMINISTRATIVE IMPLICATIONS**

The other state agency cooperation provision is vague and ambiguous. Most state agencies have specific statutory duties and responsibilities that they prioritize, as well as a specific operating budget tied to performance of those core statutory duties. While most state agencies do in fact work cooperatively when possible, there are resource and statutory duty limitations that may limit the extent of that cooperative work. It is unclear how or what resources another agency would or could provide under this cooperation provision, and whether cooperation is required even if it would interfere with the other agency's performance of its core duties.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The Regulation and Licensing Department Act also contains numerous references to the Uniform Licensing Act. The Cannabis Control Act also contains a cooperative requirement of other state agencies.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

Status Quo

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Beyond my knowledge base.

## **AMENDMENTS**