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| LFC Requester: | Ginger Anderson |
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.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:

Original **Amendment**
Correction **Substitute**

Date 1 FEB 24

Bill No: SB 274

Sponsor: Katy M. Duhigg
Short Title:

Agency Name and Code 790-Department of Public Safety
Number:
Person Writing Dale Wagoner
Phone: 505-629-2803 **Email** Dale.wagoner@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY24 | FY25 | | |
| NFI | NFI | N/A | N/A |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY24 | FY25 | FY26 | | |
| NFI | NFI | NFI | N/A | N/A |
| | | | | |

(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 | NFI | NFI | NFI | NFI | N/A | N/A |

(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

This bill creates the Compliance Bureau in the Office of Superintendent of Regulation and Licensing Department. This would require the Superintendent to employ compliance inspectors, who will be certified law enforcement officers to investigate and enforce the laws and rules of the Cannabis Control division. This would also provide them with enforcement powers and duties that include the embargo, recall, seizure, and condemnation of illegal cannabis products. These compliance inspectors would have the same powers as other law enforcement officers.

FISCAL IMPLICATIONS

There are no additional fiscal implications to DPS.

SIGNIFICANT ISSUES

DPS may assist in supporting these inspectors in some instances while conducting their investigations and/or executing warrants or multiple arrests. DPS supports RLD having law enforcement capabilities. This will greatly assist with deterring the illicit cannabis market within the state and help ensure a professional regulated cannabis market.

DPS believes that SB 274 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 SB 274 is not clear on this point. Section 2 G. of SB 274 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.

DPS is concerned that Section 1 C.’s 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” may be sending the wrong message to the future inspectors as well as to the industry. While the law recognizes a number of 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.”)

PERFORMANCE IMPLICATIONS

No performance implications to DPS.

ADMINISTRATIVE IMPLICATIONS

None for DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship, or relationship issues to DPS

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

No other substantive issues to DPS.

ALTERNATIVES

No impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.