Department of Planning and Budget
2019 Fiscal Impact Statement

1. **Bill Number:** HB2268

House of Origin	☒	Introduced	☐	Substitute	☐	Engrossed
Second House	☐	In Committee	☐	Substitute	☐	Enrolled

2. **Patron:** Charles D. Poindexter

3. **Committee:** Appropriations, Sub-Committee: General Government and Capital Outlay

4. **Title:** Federal equitable sharing funds received by state agencies.

5. **Summary:** Provides that any federal equitable sharing funds, as defined in the bill, received by a state agency shall be deposited into the general fund. The bill also provides that such funds may be appropriated for any purpose in a manner consistent with federal law.

6. **Budget Amendment Necessary**: Indeterminate.

7. **Fiscal Impact Estimates:** Preliminary, see item 8.

8. **Fiscal Implications:** This bill may result in the loss or reduction of federal equitable sharing funds. The U.S. Department of Justice and U.S. Department of Treasury have established policies for equitable sharing in their "Guide for Equitable Sharing." Failure to comply with the policies in the Guide may subject recipient agencies to sanctions that include denial or extinguishment of sharing requests, temporary or permanent exclusion from the Program, freeze on receipt and/or expenditure of shared funds, repayment of funds already received, and others.

   The bill's requirement that equitable sharing funds be deposited into the general fund would commingle those funds with the general fund, which creates a non-compliance with the federal equitable sharing policy that the recipient "establish separate Department of Justice and Department of the Treasury accounts or accounting codes to track both revenues and expenditures for each respective Program. No other funds may be commingled in these accounts or with these accounting codes."

   Appropriating federal equitable sharing funds through the general fund would make it difficult to prove that the federal funds are spent to supplement agency law enforcement programs, as opposed to supplanting state spending. The Federal equitable sharing program requires that the shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency. The U.S. Departments of Justice and Treasury may interpret the deposit of federal equitable sharing funds to the general fund as an attempt to supplant which is not allowed under program guidelines and may result in loss of these funds.

The exact fiscal impact of this bill is indeterminate. There is no way to predict the future revenue from the federal equitable sharing program. In order to receive an equitable share, an agency must assist in the law enforcement effort resulting in federal forfeiture.

The Department of Military Affairs (DMA) provided the following summary:
21 USC 881 and its implanting guidance requires that the federally forfeited funds go to the state agency that is involved in the seizure. For DMA this would be the Virginia National Guard Counterdrug program. The policy that implements the law specifies the requirements and sets out reporting and auditing process. If the funds come in to counterdrug and then are placed in the general fund it will be more difficult to provide the reassurance to the federal agency overseeing the funds that they are being spent properly. In addition, since the general funds are lost as of June 30 of each year, then there is a chance that the funds will be taken and used in a different year and with another agency. If this occurred, DMA would risk losing the ability receive any federal forfeited funds.

DMA received $51, 959 in FY 2017 and $32,735 in FY 2018. These funds were received from various Federal agencies including DEA, SSPS, and the US Marshall Service. Since any future revenues are based on assets confiscated during busts, there is no way to predict future revenues.

The Department of State Police (VSP) indicates that this legislation would require VSP to deposit any federal equitable sharing funds into the General Fund. These funds are used to support drug task force activities. In FY2017, there was $1,032,205 received as revenue and $494,828 received in FY2018. The agency would lose this revenue and have to absorb associated expenditures out of the operating budget. Expenses for the federal equitable sharing funds totaled $2,447,729 in FY2017 and $2,829,177 in FY2018. These revenue and expenditure figures also include activities for the Purdue Pharma and Abbott Labs funds. Based on prior year data, VSP estimates they would expend an additional estimated $2.6 million from this proposed legislation.

9. **Specific Agency or Political Subdivisions Affected:** Attorney General and Department of Law and other Law enforcement agencies.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:**