

2009 HOUSE TRANSPORTATION

HB 1233

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1233

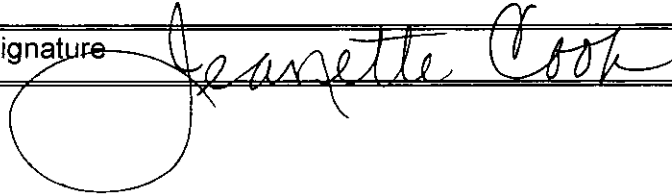
House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01/29/09

Recorder Job Number: 8119

Committee Clerk Signature



Minutes:

**Representative Rick Berg**, District 45, introduced HB 1233. He explained that this bill is a housekeeping bill. The language in line eleven will be taken out. When money is received from Federal government, they do not want it commingled or placed in the general fund. This bill allows the highway patrol to receive the money and keep it separate.

**Mark Nelson, North Dakota Highway Patrol**, spoke in support of HB 1233 and provided written testimony. See attachment #1. HB 1233 removes the reference to funds received from the federal asset forfeitures. This came to our attention last year when we received a federal forfeiture. We learned through the process that what we currently had in place in from last session's law, didn't apply to the federal side. It is not something that is received every year. If we don't comply, we won't be able to take the federal forfeitures. The last amount that we received was \$344,000. There are guidelines that are followed when spending the money. The dollars have to go back into the law enforcement agency. The department did not set up their own fund. The money was funded into our Federal Spending Authority. If we get assets seized, we have an agreement with Bureau of Criminal Investigation. They handle the process of handling the property, and we share the proceeds.

**Representative Vigesaa** moved a Do Pass on HB 1233.

**Representative Thorpe** seconded the motion.

A roll call vote was taken. **Aye 14 Nay 0 Absent 0**

**Representative Delmore** will carry the bill.

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2009

Bill/Resolution No.: HB 1233

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The measure has no fiscal impact.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The measure has no fiscal impact. The language is being changed for the purpose of clarification.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The effect on revenues is \$-0-.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effect on expenditures is \$-0-.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The effect on appropriations is \$-0-.

<b>Name:</b>	Dave Kleppe	<b>Agency:</b>	Highway Patrol
<b>Phone Number:</b>	328-4346	<b>Date Prepared:</b>	01/16/2009

Date: 1-29-09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1233

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do pass ☐ Don't Pass ☐ Amended

Motion Made By Vigesaa Seconded By Thorpe

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigasaa	✓				
Representative Weisz	✓				

Total Yes 14 No 0

Absent 0

Bill Carrier Delmore

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 29, 2009 1:16 p.m.

**Module No: HR-18-1196**  
**Carrier: Delmore**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1233: Transportation Committee (Rep. Ruby, Chairman) recommends DO PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1233 was placed on the  
Eleventh order on the calendar.

2009 SENATE TRANSPORTATION

HB 1233

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2009

Recorder Job Number: 9754

Committee Clerk Signature

*Jody Hauge*

Minutes:

**Chairman Gary Lee** opened the hearing on HB 1233 relating to the highway patrol asset forfeiture fund. All committee members were present.

**Representative Rick Berg** said that right now the federal government allows us to share forfeiture money but the federal government says we cannot commingle funds. What the bill does is sets up a separate fund. The money that comes from the Feds would be able to be received and used appropriately.

**Senator Potter** asked where the account would be set up.

**Reps. Berg** said he would let the Department figure that out. Rep. Berg gave the history of the original bill.

**Senator Lee** asked if there was a conflict with Sub-section 4.

**Rep. Berg** said no.

**Senator Lee** asked Rep. Berg why he came to sponsor this bill.

**Rep. Berg** said that several years ago we put this statute in place and now I am responsible to help fix the problem that we created with the language.

**Colonel Mark Nelson**, Superintendent of the Highway Patrol testified in support of HB 1233.

Written testimony #1.



**Senator Nething** asked what kind of funds they seize.

**Colonel Nelson** Drugs, firearms, etc. that is the type of funds. The case we are dealing with now, is a traffic stop of an illegal alien and they seized 1.4 million and we got a portion of that. Discussion followed on why the need for separate accounts and the importance of not commingling.

**Senator Lee** asked on the spending of this fund.

**Colonel Nelson** said their intent is to spend it as the legislative wishes.

**Senator Lee** asked if there was a limit on what can be carried through.

**Colonel Nelson** said there was no limit and yes they can carry it forward.

**Senator Nething** what we are doing here is simply taking the Federal aspect out of state law and the governs would be the federal agreement.

**Colonel Nelson** said that is a fair assessment.

**Senator Fiebiger** has a concern on the language and if this will fix the problem.

**Colonel Nelson** said it is covered under the Equitable Share Agreement and we are comfortable with that.

### **No Opposing Testimony**

Closed the hearing on HB 1233.

Discussion followed on the bill and it was decided to do more research on accepting fund. The intern will research what kind of broad authority we have to take Federal Funds.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2009

Recorder Job Number: 9803

Committee Clerk Signature

*Jody Haupe*

Minutes:

Committee Work on HB 1233.

Discussion continued on the authority and the possibility of an amendment to give them authority to enter into contracts. The committee wants more information before they act on this bill.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2009

Recorder Job Number: 9856

Committee Clerk Signature

*Jody Hays*

Minutes:

Committee work on HB 1233.

The intern presented her information on her research from the legislative council.

**Senator Nething** moved a Do Pass.

**Senator Fiebiger** seconded.

Roll call vote: 5-0-1.

**Senator Fiebiger** will carry the bill.

Date: 2-27-09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1233

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

Motion Made By Senator Nething Seconded By Senator Fiebiger

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais		
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Fiebiger

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1233: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS**  
**(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1233 was placed on the**  
**Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1233

# Attachment # 1

House Transportation Committee  
House Bill 1233  
Submitted by  
Mark Nelson, NDHP

*Same  
testimony &  
handout given to  
Senate.*

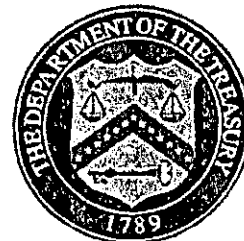
January 29, 2009

Mr. Chairman and members of the House Transportation Committee, I'm Colonel Mark Nelson, Superintendent of the Highway Patrol. House Bill 1233 removes the reference to funds received from federal asset forfeitures. Based on federal equitable sharing agreement requirements, funds from state forfeitures cannot be commingled with federal equitable sharing funds and cannot be placed in the general fund (please refer to Page 4, item 5 of the attached document).

We are requesting that the Highway Patrol Asset Forfeiture Fund be authorized for use only when funds are received in cases involving state asset forfeitures. Accounting procedures provide for acceptance of federal asset forfeiture proceeds in a manner similar to receiving federal grant funding.



# Equitable Sharing Agreement and Certification



OMB Number 1123-0011  
Expires 7-31-2011

- ☐ Police Department ☐ Sheriff's Office ☐ Task Force (Complete Table A, page 2)  
☐ Prosecutor's Office ☐ Other (specify) \_\_\_\_\_

Agency Name: \_\_\_\_\_

NCIC/ORI/Tracking Number: 

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Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact: Title: \_\_\_\_\_ First: \_\_\_\_\_ Last: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact Fax: \_\_\_\_\_

Contact e-mail: \_\_\_\_\_

Last Fiscal Year End (mm/dd/yyyy): 

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- ☐ **New Participant:** Read the Equitable Sharing Agreement (page -1) and sign the Affidavit (page -1)
- ☐ **Existing Participant:** Complete the Annual Certification Report, read the Equitable Sharing Agreement (page -1), and sign the Affidavit (page -1)
- ☐ **Change in Administration:** Select to report change to Agency or Governing Body head DURING the current fiscal year. Read the Equitable Sharing Agreement (page -1) and sign the Affidavit (page -1).
- ☐ **Amended Form:** Revise the Annual Certification Report, read the Equitable Sharing Agreement (page -1), and sign the Affidavit (page -1).

## Annual Certification Report

Summary of Equitable Sharing Activity		Justice Funds	Treasury Funds
1	Beginning Equitable Sharing Fund Balance (must match Ending Equitable Sharing Fund Balance from prior FY)		
2	Federal Sharing Funds Received		
3	Federal Sharing Funds Received from Other Law Enforcement Agencies and Task Forces (complete Table B, page -1)		
4	Other Income		
5	Interest Income Accrued ( <input type="checkbox"/> check if non-interest-bearing account)		
6	Total Equitable Sharing Funds (total of lines 1 - 5)	\$0.00	\$0.00
7	Federal Sharing Funds Spent (total of lines a - n below)	\$0.00	\$0.00
8	Ending Balance (subtract line 7 from line 6)	\$0.00	\$0.00



### Summary of Shared Monies Spent

### Justice Funds

### Treasury Funds

a	Total spent on salaries for new, temporary, not-to-exceed one year, employees		
b	Total spent on overtime		
c	Total spent on informant and "buy money"		
d	Total spent on travel and training		
e	Total spent on communications and computers		
f	Total spent on firearms and weapons		
g	Total spent on body armor and protective gear		
h	Total spent on electronic surveillance equipment		
i	Total spent on building and improvements		
j	Total spent on other law enforcement expenses (complete Table C, page -1)		
k	Total transfers to other state and local law enforcement agencies (complete Table D, page -1)		
l	Total 15% Expenditures in Support of Community-based Programs (complete Table E, page -1)		
m	Total 25% Windfall Transfers to Other Government Agencies (complete Table F, page -1)		
n	Total spent on matching grants (complete Table G, page -1)		
<b>Total</b>		<b>\$0.00</b>	<b>\$0.00</b>

### Miscellaneous Data

o	Agency's budget for current fiscal year	
p	Jurisdiction's budget for current fiscal year	
q	Appraised Value of Other Assets Received	

Table A: Members of Task Force

Agency Name

Address

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Table B: Equitable Sharing Funds Received from other Agencies

Transferring Agency Name, City, and State

Justice Funds

Treasury Funds

Agency Name

Agency Address

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Table C: Other Law Enforcement Expenses

Description of Expense	Justice Funds	Treasury Funds

Table D: Equitable Sharing Funds Transferred to Other Agencies

Receiving Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name		
Agency Address		

Table E: 15% Expenditures in Support of Community-based Programs

Recipient	Justice Funds	Treasury Funds

Table F: 25% Windfall Transfers to Other Government Agencies

Recipient	Justice Funds	Treasury Funds

7G: Matching Grants

Matching Grant Name	Justice Funds	Treasury Funds

Table H: Civil Rights Cases

Name of Case	Type of Discrimination Alleged				Status
	<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> National Origin	<input type="checkbox"/> Gender	<input type="radio"/> Settled
	<input type="checkbox"/> Disability	<input type="checkbox"/> Age	<input type="checkbox"/> Other		<input type="radio"/> Pending

### Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section, Program Unit, 1400 New York Avenue, N.W., Second Floor, Washington, DC 20005.

# Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the above-stated law enforcement agency ("Agency"), and (3) the governing body, sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By its signatures, the Agency agrees that it will be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the federal equitable sharing program. Receipt of the signed Equitable Sharing Agreement and Certification (this "Document") is a prerequisite to receiving any equitably shared cash, property, or proceeds.

**1. Submission.** This Document must be submitted to [aca.submit@usdoj.gov](mailto:aca.submit@usdoj.gov) within 60 days of the end of the Agency's fiscal year. This Document must be submitted electronically with the Affidavit/Signature page (page -1) submitted by fax. This will constitute submission to the Department of Justice and the Department of Treasury.

**2. Signatories.** This agreement must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, chairperson, secretary, city attorney, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body's head is the person who allocates funds or approves the budget for the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, director, secretary, administrator, commissioner, and governor.

**3. Uses.** Any shared asset shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern the federal equitable sharing program as set forth in the current edition of the Department of Justice's *Guide to Equitable Sharing (Justice Guide)*, and the Department of the Treasury's *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Treasury Guide)*.

**4. Transfers.** Before the Agency transfers cash, property, or proceeds to other state or local law enforcement agencies, it must first verify with the Department of Justice or the Department of Treasury, depending on the source of the funds, that the receiving agency is a federal equitable sharing program participant and has a current Equitable Sharing Agreement and Certification on file.

**5. Internal Controls.** The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds. The Agency shall establish a separate revenue account or accounting code for state, local, Department of Justice, and Department of the Treasury forfeiture funds. Interest income generated must be accounted for in the appropriate federal forfeiture fund account.

The Agency agrees that such accounting will be subject to the standard accounting requirements and practices employed for other public monies as supplemented by requirements set forth in the current edition of the *Justice Guide* and the *Treasury Guide*.

The misuse or misapplication of shared resources or the supplantation of existing resources with shared assets is prohibited. Failure to comply with any provision of this agreement shall subject the recipient agency to the sanctions stipulated in the current edition of the *Justice or Treasury Guides*, depending on the source of the funds/property.

**6. Audit Report.** Audits will be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Circular A-133. The Department of Justice and Department of the Treasury reserve the right to conduct periodic random audits.

# Affidavit

Under penalty of perjury, the undersigned officials certify that they have read and understand their obligations under the **Equitable Sharing Agreement** and that the information submitted in conjunction with this Document is an accurate accounting of funds received and spent by the Agency under the *Justice and/or Treasury Guides* during the reporting period and that the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture.

The undersigned certify that the recipient agency is in compliance with the nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity.

**During the past fiscal year, has the Agency been part of any proceedings alleging discrimination by the Agency? ☐ Yes ☐ No**

**If you answered yes, complete Table H. Please disclose (1) all proceedings pending before any court or administrative agency, (2) any nondiscrimination laws the Agency has been found in violation of, and (3) any settlement agreements the Agency has entered into during the last fiscal year.**

## Agency Head

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Governing Body Head

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Final Instructions:

**Step 1: Click button to save in PDF format for your records**

**Step 2: Click button to save in XML format**

**Step 3: E-mail the XML file as attachment to [aca.submit@usdoj.gov](mailto:aca.submit@usdoj.gov)**

**Step 4: Fax a signed copy of THIS PAGE ONLY to (202) 616-1344**

**Note: The Agency will not be in compliance until the e-mail and the fax of this page are received.**

FOR AGENCY USE ONLY

Entered by \_\_\_\_\_

Entered on \_\_\_\_\_

FY End: \_\_\_\_\_

CIC: \_\_\_\_\_

Agency: \_\_\_\_\_

Phone: \_\_\_\_\_

State: \_\_\_\_\_

Contact: \_\_\_\_\_

E-mail: \_\_\_\_\_

