



ROBERT BROOKS

STATE REPRESENTATIVE • 59TH ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on Local Government
Wednesday, May 7, 2025

Chairman Novak and members of the Assembly Committee Local Government, thank you for affording me with the opportunity to testify on behalf of Assembly Bill 188, the reduction of penalty surcharge bill.

Assembly Bill 188 was drafted on behalf of the Wisconsin Counties Association and a constituent from Ozaukee County. The bill makes much-needed changes to the court surcharges for forfeiture actions process. When a county issues a forfeiture, a surcharge is applied under Wis. Stat. 814.80. Of note is the "Penalty Surcharge" under Wis. Stat. 814.80 (9), which is calculated as twenty-six percent of the forfeiture. For example, a one-day surcharge on a \$500 forfeiture is \$130. A ten-day violation would result in a \$1,300 penalty surcharge, which is excessive.

Counties use civil forfeiture to obtain compliance with county ordinances. Examples of violations counties pursue a remedy for are failure to file Private Onsite Wastewater Treatment maintenance reports and actions in Shoreland/floodplain areas in violation of permitting requirements. Counties need to be able to leverage the multiple day forfeiture to obtain compliance.

In many cases, a resolution is found with those who are in violation, however, counties are often forced to reduce forfeitures down to as low as \$10 each day just because the surcharges are so substantial. This becomes a revenue-raising device for courts, which, by law, is unacceptable (*Madison v. McManus*, 1969). Thus, the forfeiture for ordinance violations cannot be so high as to serve as a revenue producing device; at least, its primary purpose cannot be the raising of revenue in lieu of taxation. Counties are not made whole for the cost of enforcing the ordinance when they must reduce forfeitures to a paltry sum to avoid imposing outrageous penalty surcharges.

Under current law, when a court imposes a fine or forfeiture for certain violations of state law or municipal or county ordinances, a penalty surcharge in the amount of twenty-six percent of the amount of the fine or forfeiture is also imposed. Furthermore, current law provides that when a fine or forfeiture is suspended in whole or in part, the penalty surcharge must be reduced in proportion to the suspension.

Assembly Bill 188, quite simply requires the aforementioned rule to be applied for reduction of a fine or forfeiture. For example, when a fine or forfeiture to which the penalty surcharge applies is reduced, the penalty surcharge must also be reduced in proportion to the reduction.



DAN FEYEN

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To: The Assembly Committee on Local Government
From: Sen. Dan Feyen
Re: Assembly Bill 188

Hello members of the committee, thank you for taking the time to hear testimony on AB 188.

This bill was brought to our attention by the Wisconsin Counties Association

Counties use civil forfeiture as a tool to get compliance with county ordinances. Often counties will leverage multiple day forfeitures in order to get a desired result. For example, if I was in violation of a permitting ordinance, the county could charge me x dollars a day until my property was brought into compliance. Once there is a satisfactory resolution, the county has the option waive or reduce these fines. Unfortunately, they are not able to waive or reduce the surcharge.

Under current law, counties must place a surcharge of 26% on each fine. This can become quite costly when multiple day forfeitures are involved, because each fine is treated with its own individual 26% surcharge. Once a resolution is reached, counties are unable to amend the surcharge. So, even if the county had eliminated the daily fines, the accumulated surcharges would still be owed. This can lead to costly litigation when the surcharge is often much larger than the fines themselves.

Currently, the court system has the ability to reduce surcharges in proportion to suspended fines or forfeitures. AB 188 simply allows the counties to do this as well. This allows counties to maintain the tools to achieve compliance, while giving them flexibility once a resolution has been reached. AB 188 requires surcharges to be reduced in proportion to any reduction in the fine or forfeiture.

Lastly, I just want to note that the surcharges, once collected, head to the state. Lowering the surcharges collected will not impact county budgets in any way.

Thank you again for taking the time to hold a hearing on this bill.

MEMORANDUM

TO: Honorable Members of the Assembly Committee on Local Government

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: Wednesday, May 7, 2025

SUBJECT: Support of Assembly Bill 188: Reduction of the penalty surcharge when certain fines or forfeitures are reduced

Under Wisconsin law, Chapter 814, the state adds extra charges to fines and forfeitures for certain violations. These surcharges help pay for parts of the state's judicial system. This bill focuses on Wisconsin Statute § 757.05, which adds an extra penalty surcharge equal to 26 percent of any court-imposed fine or forfeiture for specific violations of state law, municipal, or county ordinance. Specifically, Wis. Stat. § 757.05(1)(a) applies to "...a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) or (2m), for a financial responsibility violation under s. 344.62 (2), or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m)..."

Under Wis. Stat. § 757.05, when a fine or forfeiture is suspended in whole or in part, the state penalty surcharge must be reduced in proportion to the suspension. However, Wis. Stat. § 757.05 currently does not provide for a corresponding reduction to the state surcharge when a fine or forfeiture is reduced rather than suspended.

For this reason, it becomes exceedingly difficult for a county's corporation counsel to negotiate a lower fine or forfeiture because the state surcharge cannot be reduced corresponding with the reduction made to the county fine or forfeiture. In many cases, this eliminates an important compliance incentive in zoning and land use cases where compliance with code is more important than the monetary penalty.

WCA respectfully requests your support for AB 188.

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