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Joint Committee on Finance

Paper #423

Crime Prevention Funding Board

[LFB 2015-17 Budget Summary: Page 188, #2]

CURRENT LAW

Under current law, a variety of surcharges may be assessed with the conviction of either a misdemeanor or a felony. Current law provides an order for which these surcharges, fines, and other court costs should be paid.

GOVERNOR

Crime Prevention Funding Board Surcharge. Create the crime prevention funding board surcharge. Require a court to impose a crime prevention funding board surcharge whenever the court imposes a sentence or places a person on probation. The surcharge would total \$20 for each misdemeanor or felony count on which conviction occurred.

Provide that prior to paying the crime prevention funding board surcharge, an individual must first pay the following surcharges, in full, if payment of these surcharges is required by the court: (a) the penalty surcharge; (b) the jail surcharge; and (c) the crime victim and witness surcharge.

Further, the new surcharge must be paid, in full, ahead of the following surcharges: (a) the crime laboratory and drug law enforcement surcharge; (b) the DNA analysis surcharge; (c) the child pornography surcharge; (d) the drug abuse program improvement surcharge; (e) the drug offender diversion surcharge; (f) the driver improvement surcharge; (g) the truck driver education surcharge; (h) the domestic abuse surcharge; (i) the global positioning system tracking surcharge; (j) the consumer protection surcharge; (k) various Department of Natural Resources and environmental surcharges; (l) the weapons surcharge; (m) the uninsured employer surcharge; (n) the supplemental food enforcement surcharge; (o) the ignition interlock surcharge; and (p)

payment of the fine and other costs and fees imposed.

Provide that, after the clerk of the court determines the amount owed under surcharge, the clerk must collect the surcharge payments and transmit the collected amounts to the county treasurer. Require that the county treasurer: (a) deposit all monies received from the crime prevention funding board surcharge into a crime prevention fund; and (b) make grant payments with the amounts collected from the surcharge, as directed by the Crime Prevention Funding Board.

Crime Prevention Funding Board. Create a crime prevention funding board in each county in which the county treasurer receives money from the crime prevention funding board surcharge. Authorize the Board to solicit applications for grants and vote on how to direct the county treasurer to distribute grants to applicants from monies in the crime prevention fund. Provide that the Board may direct the county treasurer to distribute grants to any of the following entities, in amounts determined by the Board: (a) one or more private nonprofit organization within the county with a primary purpose of preventing crime, providing a funding source for crime prevention programs, encouraging the public to report a crime, or assisting law enforcement agencies in the apprehension of criminal offenders; and (b) a law enforcement agency within the county that has a crime prevention fund, if the contribution is used for crime prevention purposes. Require that the Board direct not less than 50% of the grant payments from the crime prevention fund to one or more organization described under (a).

Require that a county Crime Prevention Funding Board consist of the following members: (a) the presiding judge of the circuit court, or his or her designee; (b) the district attorney, or his or her designee; (c) the sheriff, or his or her designee; (d) one of the following county officials, or his or her designee: (1) a county executive; (2) the county administrator, if the county does not have a county executive; or (3) the chairperson of the county board of supervisors, if the county does not have a county executive or a county administrator; (e) the chief elected official of the largest municipality in the county, as determined by population, or his or her designee; (f) a person chosen by a majority vote of the sheriff and all the chiefs of police departments that are located wholly or partly within the county; and (g) a person chosen by the Public Defender's office that handles cases in the county.

Provide that members of the Board must meet, and its members may receive no compensation other than reimbursement for actual and reasonable expenses incurred in the performance of their duties on the Board. Members must serve for the terms that are determined by the Board. Provide that, upon the creation of a Board, the initial members must declare that they are serving on the Board, or appoint their designees, not later than the first day of the 4th month beginning after the Board is created.

Reporting Requirements of the Crime Prevention Funding Board and Grant Recipients. Require that the Crime Prevention Funding Board annually submit a report on its activities to the following: (a) the clerk of the court for the county that distributed the funds; (b) the county board; and (c) the legislative bodies of each municipality that is located wholly or partly within the county. The report must contain the following information for the year to which the report relates: (a) the name and address of each entity that received a grant, including contact

information for the leadership of the entity; and (b) a full accounting of all funds disbursed by the county treasurer at the direction of the Board, including the amount of the funds disbursed, the dates of the disbursement, and the purpose for which the grant was made.

Require that each recipient of a grant awarded from the crime prevention fund annually submit a report on its activities to the following: (a) the Crime Prevention Funding Board; (b) the clerk of the court for the county that distributed the funds; (c) the county board, and (d) the legislative bodies of each municipality that is located wholly or partly within the county. The report must contain the following information for the year to which the report relates: (a) the name and address of the grant recipient; (b) the name, address, and title of each member of the governing body of the grant recipient; (c) the purposes for which the grant award was spent; (d) a detailed accounting of all receipts and expenditures of the grant recipient that relate to the grant award; and (e) the balance of any remaining funds.

DISCUSSION POINTS

1. On April 13, 2015, the Secretary of the Department of Administration submitted an errata report for AB 21/SB 21. In the report, the administration indicates that the crime prevention funding board (CPFEB) surcharge is listed in the incorrect location in the order of precedence for surcharge payments. Under the bill, the CPFEB surcharge would be paid after an individual pays the following surcharges, if necessary: (a) the penalty surcharge; (b) the jail surcharge; and (c) the crime victim and witness surcharge. The CPFEB surcharge would be required to be paid, in full, before all other surcharges, fines, fees, and court costs. The errata indicates that the bill should be modified to require that the CPFEB surcharge would be paid after payment of all other surcharges imposed on an individual, but before payment of the fine, fees, and other court costs assessed on the individual.

2. Under the bill, a court would be required to impose a CPFEB surcharge whenever the court imposes a sentence or places a person on probation. The surcharge would total \$20 for each misdemeanor and felony count on which conviction occurs. None of the revenues generated from the CPFEB surcharge would be collected by the state. Rather, revenues collected from the CPFEB surcharge would remain with the counties. After the clerk of the court determines the amount owed under the surcharge, the clerk would be required to collect the surcharge payments and transmit the collected amounts to the county treasurer.

3. While current law generally requires that surcharges be paid within 60 days, the time limit may be extended if the court orders payments of restitution. If an individual is unable to pay the total amount assessed in 60 days, the courts may authorize a payment plan to allow an individual additional time to pay all of the costs assessed on the individual.

4. Once CPFEB surcharge revenues are received, the county treasurer would be required to either: (a) deposit the revenues into a crime prevention fund; or (b) make grant payments with the amounts collected from the CPFEB surcharge, as directed by the crime prevention funding board. County crime prevention funding boards, as created under AB 21/SB 21, would exist in each county that receives money from the CPFEB surcharge. Boards would have the authority to solicit grant applications and direct the county treasurer to distribute grants supported by monies in the crime

prevention fund. Under the bill, Boards may direct the county treasurer to distribute grants to any of the following entities, in amounts determined by the Board: (a) one or more private nonprofit organization within the county with a primary purpose of preventing crime, providing a funding source for crime prevention programs, encouraging the public to report a crime, or assisting law enforcement agencies in the apprehension of criminal offenders; or (b) a law enforcement agency within the county, if the contribution is used for crime prevention purposes. The Boards would be required to direct at least 50% of the grant payments from the crime prevention fund to one or more organizations described under (a).

5. The bill establishes reporting requirements for both the Crime Prevention Funding Boards and the entities to which the Boards would award grants. Specifically, Boards would be required to annually report on their activities to the clerk of the court, the county board, and the legislative bodies of each municipality that is located wholly or partly within the county. Further, grant recipients must report on the usage of grant awards to the following: (a) the Board that awarded the grant; (b) the clerk of the court; (c) the county board; and (d) the legislative bodies of each municipality that is located wholly or partly within the county.

6. Table 1 identifies overall court collections from calendar years 2010 through 2014. As the table below indicates, overall court collections have decreased in recent years. From 2010 to 2014, the annual amount collected decreased by 17.4%. A 2012 Legislative Audit Bureau report on crime victim and witness surcharge revenue collections identified the following factors that could limit court revenue collections: (a) trends in the number of criminal charges and convictions; (b) the extent to which assessed surcharges are unpaid; and (c) statewide economic trends.

TABLE 1

Overall Court Collections, Calendar Years 2010 Thru 2014

<u>Calendar Year</u>	<u>State Share*</u>	<u>County Share</u>	<u>Total**</u>
2010	\$124,235,900	\$39,792,100	\$164,028,000
2011	114,712,800	36,387,200	151,100,000
2012	114,942,300	36,545,600	151,487,900
2013	114,189,200	34,883,700	149,072,900
2014	104,815,200	30,643,200	135,458,400

*State share includes amounts utilized to support the administration of the Consolidated Court Automation Program (CCAP).

**Total collections include amounts collected from the following: (a) surcharges; (b) fees; (c) assessments; and (d) fines, forfeitures, and penalties for violations of state law and municipal and county ordinances.

7. As indicated above, the CPFBS surcharge would total \$20 for each misdemeanor or felony count on which conviction occurs. The administration did not provide an estimate of revenues that could be generated from the CPFBS surcharge. Appendix I, however, provides the average number of felony and misdemeanor cases disposed of from calendar year 2012 through calendar year 2014, by county, not including cases that were dismissed before trial. With regards to

the data provided in Appendix I, the following should be noted: (a) at this time, aggregate data does not exist quantifying the number of convictions that occurred from 2012 through 2014, however the Courts indicate that the total number of cases disposed less cases that were dismissed before trial provides a close estimate to the number of convictions reached; (b) aggregate data does not exist as to the number of counts on which conviction occur; and (c) potential revenue amounts are based on data from 2012 through 2014. Any variation in the number of offenses or payment patterns in future years would affect revenue.

8. Given that the creation of a new CPFBS surcharge could generate additional revenue for individual counties for crime prevention purposes, the Committee could approve of the Governor's recommendation to create a new CPFBS surcharge and county crime prevention funding boards [Alternative 1]. Under this alternative, the CPFBS surcharge would be paid after the penalty surcharge, the jail surcharge, and the crime victim and witness surcharge. The surcharge would be paid before all other surcharges, fines, fees, and court costs. [This alternative reflects the Governor's recommendation under AB 21/SB 21, as introduced.]

9. Under the bill, the newly created CPFBS surcharge would be paid before several other current law surcharges that support a variety of state programs. Appendix II identifies: (a) the order of surcharges that could be imposed if an individual is sentenced to pay a fine and is placed on probation, as introduced under AB 21/SB 21; (b) the instances in which the surcharge would be assessed; and (c) the amount of the surcharge. Requiring that the CPFBS surcharge be paid, in full, prior to the payment of other surcharges, fines, and other court fees could delay the amounts collected from those other assessments, depending on the individual's ability to pay. Typically, the courts will authorize a payment plan for individuals unable to pay all of the assessed costs within 60 days. The Courts indicate that payment plans may differ on a case-by-case basis.

10. Since the introduction of AB 21/SB 21, the administration submitted an errata report that included a recommendation to modify the CPFBS surcharge. In the errata, the administration indicates that, under the bill, the CPFBS surcharge is listed in the incorrect location in the order of precedence for surcharge payments. To correct this issue, the administration recommends that the CPFBS surcharge be moved down in the order of precedence of surcharge payments. Specifically, the administration recommends that the CPFBS surcharge should be paid, in full, after the individual pays all other assessed surcharges. Under the errata, the CPFBS surcharge would be paid before any assessed fines, fees, and other court costs. Table 2 identifies the order of surcharges that could be imposed with the modification recommended in the errata.

TABLE 2

Order of Surcharges, Fines, and Other Court Costs under Errata

Surcharge

Penalty surcharge
Jail surcharge
Crime victim and witness surcharge
Crime laboratory and drug law enforcement surcharge
DNA analysis surcharge
Child pornography surcharge
Drug abuse program improvement surcharge
Drug offender diversion surcharge
Driver improvement surcharge
Truck driver education surcharge
Domestic abuse surcharge
Global positioning system tracking surcharge
Consumer protection surcharge
Various Department of Natural Resources and environmental surcharges
Weapons surcharge
Uninsured employer surcharge
Supplemental food enforcement surcharge
Ignition interlock surcharge
Crime prevention funding board surcharge
Other assessed fines and court costs

11. Given that the administration issued an errata indicating that the CPFEB surcharge should be paid after existing surcharges, and that requiring the CPFEB surcharge to be paid after existing surcharges may reduce delays in amounts collected by those existing surcharges, the Committee could modify the bill as recommended in the administration's errata report [Alternative 2]. Under this alternative, the CPFEB surcharge would be paid after all other assessed surcharges, but before any assessed fines, fees, and other court costs.

12. Under current law, an individual charged with either a felony or a misdemeanor is assessed several fees and surcharges in addition to the fine. For example, Table 3 illustrates the surcharges, fees, and fines that an individual is currently assessed with a conviction of vagrancy, a Class C misdemeanor (the lowest class of misdemeanor). In reviewing Table 3, the following should be noted: (a) the amount an individual is assessed is partially dependent on the initial fine imposed; (b) the amount assessed could be greater than the amounts listed in the table depending on the violation; and (c) depending on the violation, additional fees and surcharges not identified in Table 3 may be assessed. Given the amount that is currently assessed on an individual convicted of a misdemeanor or felony, one might question the need for an additional surcharge.

TABLE 3

Fines, Fees, and Surcharges Assessed with a Charge of Vagrancy

<u>Violation</u>	<u>Statute</u>	<u>Fine</u>	<u>Penalty</u>	<u>Jail</u>	<u>Surcharge*</u>			<u>Clerk Fee</u>	<u>Total</u>
					<u>Victim and Witness**</u>	<u>Crime Laboratory and Drug</u>	<u>DNA Analysis</u>		
Vagrancy	947.02	Up to \$500	Up to \$130	\$10	\$67	\$13	\$200	\$163	Up to \$1,083

*Depending on the violation, additional surcharges may be assessed.

**Total amount subject to the number of counts on which a conviction occurs.

13. In considering revenues that may be generated from the CPFBS surcharge, an individual's ability to pay all of the imposed costs in a timely manner may decrease revenue that the surcharge could be expected to generate. As indicated above, an individual must pay several different fines, fees, and surcharges when convicted of a misdemeanor or felony. Further, as a result of the multiple fines, fees, and surcharges imposed, the courts have indicated difficulty in collecting the amounts owed. In regards to the creation of a new surcharge, the Director of State Courts Office has indicated: "The collection process in most counties is already strained from efforts to collect the statutorily-mandated restitution, fines, forfeitures and surcharges...the continued proliferation of surcharges jeopardizes access to the court system and significantly increases the amount of money a violator must pay."

14. Furthermore, concerns have been raised with regards to the relationship between the crime prevention funding boards and the assessment of the CPFBS surcharge. Under the bill, the district attorney, or his or her designee, and the presiding judge of the circuit court, or his or her designee, would be members of the Crime Board. In her testimony to the Committee on March 2, 2015, the Chief Justice indicated that, "The perception - whether real or not - is that the [CPFBS] surcharge and the board may somehow influence criminal charging decisions or decisions in criminal cases."

15. Finally, even if the CPFBS surcharge is paid after all of the other surcharges that are assessed, the creation of a new surcharge could potentially delay revenue generated from existing surcharges. As indicated above, if an individual is unable to pay the total amount imposed within 60 days, the courts will typically authorize the individual to enter into a payment plan to pay any additional amounts owed. If the total amount owed is increased, it may take the individual a greater amount of time to pay all of their assessments.

16. For the reasons noted above, the Committee could delete the Governor's recommendation to create a CPFBS surcharge and county crime prevention funding boards [Alternative 3].

17. It should be noted that during deliberations of the 2013-15 budget bill, the Committee proposed creating a CPFBS surcharge and county crime prevention funding boards in a similar

manner to what is proposed under AB 21/SB 21. [Under the 2013-15 bill, the CPFBS surcharge would have been paid after the individual paid the global positioning system tracking surcharge, if necessary.] The Governor vetoed the Committee's proposal from the 2013-15 budget bill. In vetoing the provision, the Governor indicated the following:

"I am vetoing these sections because I object to the creation of an additional surcharge and an additional board, which may have no demonstrated effectiveness. There are already numerous surcharges on felony and misdemeanor convictions, and adding an additional surcharge will detract surcharge revenue from many other proven and worthwhile crime victim services and law enforcement programs."

18. With regards to why the Governor recommends the creation of a CPFBS surcharge and the county Crime Prevention Funding Boards in this biennium, the administration indicates the following:

"... Our office believes that this proposal has the potential to enhance efforts to reduce crime. This proposal would be a tool the state can provide to assist local communities in their crime prevention efforts as well as enhance the resources they have at their disposal. Upon review, post-enactment of 2013 Act 20 [the 2013-15 biennial budget act], it was determined that the impact on other state programs would likely be manageable."

19. Lastly, the creation of crime prevention funding boards and a CPFBS surcharge was proposed under 2013 AB 74/SB 100. Assembly bill 74 passed in the Assembly but not the Senate. Senate Bill 100 failed to pass in the Senate pursuant to Senate Joint Resolution 1.

ALTERNATIVES

1. Approve the Governor's recommendation to create a new \$20 crime prevention funding board surcharge and county crime prevention funding boards. This alternative would require that the CPFBS surcharge be paid, in full, after an individual pays the following surcharges, if necessary: (a) the penalty surcharge; (b) the jail surcharge; and (c) the crime victim and witness surcharge. The CPFBS surcharge would be required to be paid before all other surcharges, fines, fees, and court costs.

2. Create a new \$20 CPFBS surcharge and county crime prevention boards. Modify the bill to require that the CPFBS surcharge be paid after all other surcharges imposed on an individual, but before payment of the fine, fees, and other court costs assessed on the individual.

3. Delete provision.

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Appendix

APPENDIX I

Average Felony and Misdemeanor Dispositions by County, Calendar Years 2012-2014

<u>County</u>	<u>Felony Dispositions*</u>	<u>Misdemeanor Dispositions*</u>	<u>Total Dispositions</u>	<u>Potential CPF Surcharge Revenue</u>
Adams	130	366	496	\$9,900
Ashland	137	331	467	9,300
Barron	317	623	941	18,800
Bayfield	78	207	284	5,700
Brown	1,403	2,788	4,191	83,800
Buffalo	66	179	245	4,900
Burnett	100	342	442	8,800
Calumet	148	293	440	8,800
Chippewa	349	686	1,034	20,700
Clark	139	366	506	10,100
Columbia	433	903	1,336	26,700
Crawford	47	70	117	2,300
Dane	1,887	3,482	5,369	107,400
Dodge	318	689	1,008	20,200
Door	142	348	490	9,800
Douglas	364	597	961	19,200
Dunn	236	655	891	17,800
Eau Claire	692	1,572	2,264	45,300
Florence	23	80	103	2,100
Fond du Lac	510	1,337	1,848	37,000
Forest	146	273	419	8,400
Grant	261	549	810	16,200
Green	125	218	342	6,800
Green Lake	99	258	356	7,100
Iowa	111	351	463	9,300
Iron	29	60	89	1,800
Jackson	141	375	516	10,300
Jefferson	394	858	1,252	25,000
Juneau	146	312	458	9,200
Kenosha	1,093	2,091	3,183	63,700
Kewaunee	64	169	233	4,700
La Crosse	614	1,614	2,228	44,600
Lafayette	49	92	140	2,800
Langlade	175	289	465	9,300
Lincoln	195	291	486	9,700

<u>County</u>	<u>Felony Dispositions*</u>	<u>Misdemeanor Dispositions*</u>	<u>Total Dispositions</u>	<u>Potential CPFBSurcharge Revenue</u>
Manitowoc	303	778	1,081	\$21,600
Marathon	802	1,911	2,713	54,300
Marinette	188	350	538	10,800
Marquette	88	274	362	7,200
Menominee	5	27	32	600
Milwaukee	4,733	5,554	10,287	205,700
Monroe	394	765	1,159	23,200
Oconto	149	413	561	11,200
Oneida	196	502	697	13,900
Outagamie	775	2,152	2,928	58,600
Ozaukee	282	706	988	19,800
Pepin	26	61	87	1,700
Pierce	138	240	378	7,600
Polk	267	483	750	15,000
Portage	389	614	1,003	20,100
Price	54	119	173	3,500
Racine	1,253	3,535	4,788	95,800
Richland	71	195	266	5,300
Rock	883	1,819	2,702	54,000
Rusk	76	184	260	5,200
Sauk	340	1,120	1,461	29,200
Sawyer	166	434	600	12,000
Shawano	263	710	973	19,500
Sheboygan	579	1,275	1,854	37,100
St Croix	276	715	991	19,800
Taylor	82	153	235	4,700
Trempealeau	94	234	328	6,600
Vernon	106	173	279	5,600
Vilas	154	447	601	12,000
Walworth	481	888	1,369	27,400
Washburn	90	256	346	6,900
Washington	428	1,132	1,560	31,200
Waukesha	1,175	3,024	4,200	84,000
Waupaca	224	604	828	16,600
Waushara	155	466	621	12,400
Winnebago	722	2,501	3,223	64,500
Wood	<u>452</u>	<u>1,290</u>	<u>1,742</u>	<u>34,800</u>
Total	28,024	59,819	87,843	\$1,756,900

*Note that the number of felony and misdemeanor dispositions excludes cases that were dismissed before trial. Dispositions do include, however, cases which may not have led to a conviction.

APPENDIX II

Order of Surcharges, Fines, and Other Court Costs under AB 21/SB 21

<u>Surcharge, In Order of Precedence*</u>	<u>Instance of Surcharge</u>	<u>Amount</u>
Penalty surcharge	Violation of state law or municipal or county ordinance.	26% of the imposed fine or forfeiture
Jail surcharge	Violation of state law or municipal or county ordinance.	\$10, or 1% of the imposed fine or forfeiture, whichever is greater
Crime victim and witness surcharge	If a court imposes a sentence or places a person on probation.	\$92 for each felony count and \$67 for each misdemeanor count on which conviction occurs
Crime prevention funding board surcharge	If a court imposes a sentence or places a person on probation.	\$20 for each felony count and misdemeanor count on which conviction occurs
Crime laboratory and drug law enforcement surcharge	If a court imposes a sentence, places a person on probation, or imposes a forfeiture for a violation of state law or municipal or county ordinance.	\$13
DNA analysis surcharge	If a court imposes a sentence or places a person on probation.	\$250 for each felony conviction and \$200 for each misdemeanor conviction
Child pornography surcharge	If a court imposes a sentence or places a person on probation for sexual exploitation of a child or possession of child pornography.	\$500 for each image or copy of an image associated with the crime
Drug abuse program improvement surcharge	A violation of the state's Uniform Controlled Substances Act.	75% of the imposed fine and penalty surcharge
Drug offender diversion surcharge	If a court imposes a sentence or places a person on probation for a crime against property.	\$10 for each conviction
Driver improvement surcharge	If a court imposes a fine or forfeiture for violations relating to operating a vehicle under the influence of alcohol or other drugs.	\$435
Truck driver education surcharge	If a court imposes a fine or forfeiture on an individual operating a commercial vehicle for violating the rules of the road (Chapter 346 of the statutes); vehicle size, weight, or load requirements; or equipment for vehicle requirements.	\$8

<u>Surcharge, In Order of Precedence*</u>	<u>Instance of Surcharge</u>	<u>Amount</u>
Domestic abuse surcharge	If a court imposes a sentence or places an adult person on probation for a violation of a domestic abuse related restraining order or injunction; or a conviction of certain offenses that the court finds to involve an act against the following: (a) a current or former spouse; (b) an adult with whom the convict resided; or (c) an adult with whom the convict has created a child.	\$100 for each offense
Global positioning system tracking surcharge	Violation of a restraining order or injunction relating to domestic abuse or harassment.	\$200 for each offense
Consumer protection surcharge	Violations of laws related to marketing and trade practices as well as weights and measures.	25% of the imposed fine or forfeiture
Various Department of Natural Resources, and environmental surcharges	Varies depending on the surcharge.	Varies depending of the surcharge and the offense.
Weapons surcharge	Violation of laws regarding the safe use and transportation of firearms and bows.	75% of the imposed fine or forfeiture
Uninsured employer surcharge	Violations of certain laws regarding worker's compensation.	75% of the imposed fine or forfeiture
Supplemental food enforcement surcharge	Committing a practice prohibited under the state's supplemental food program for women, infants, and children.	50% of the imposed fine, forfeiture, or recoupment
Ignition interlock surcharge	Operating a vehicle under the influence of an intoxicant, or improperly refusing to submit to a test for intoxication when suspected of operating a vehicle under the influence of an intoxicant.	\$50
Other assessed fines, fees, and court costs	Varies depending on the violation.	Varies depending on the violation

*Generally, these surcharges are subject to exceptions.