

State of Wisconsin



2023 Senate Bill 791

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2023 WISCONSIN ACT 121

AN ACT *to amend* chapter 77 (title), 77.52 (13) and 77.53 (10); and *to create* 16.9565, 25.40 (1) (L), 66.0442, 77.54 (71), subchapter XIII of chapter 77 [precedes 77.997] and 196.01 (5) (b) 8. of the statutes; **relating to:** exemptions from public utility regulation regarding electric vehicle charging stations, installation and operation of electric vehicle charging stations by state agencies or local governmental units, and imposing an excise tax on electric vehicle charging.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.9565 of the statutes is created to read:

16.9565 Electric vehicle charging stations. (1) In this section:

(a) "Level 1 charger" means a device with one or more charging ports and connectors for charging electric vehicles that operates on a circuit up to 120 volts and transfers alternating current electricity to a device in an electric vehicle that converts alternating current to direct current to recharge an electric vehicle battery.

(b) "Level 2 charger" has the meaning given for "AC Level 2" under 23 CFR 680.104

(c) "Level 3 charger" means a direct current fast charger, as defined under 23 CFR 680.104, and analogous successor technologies.

(d) "State agency" means an association, authority, board, department, commission, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law.

(2) (a) Except as provided in par. (b), no state agency may own, operate, or lease an electric vehicle charging station containing a Level 1, Level 2, or Level 3 charger

unless the charger is not available to the public and is used solely to charge vehicles owned or leased by a state agency.

(b) A state agency may own, operate, manage, or lease an electric vehicle charging station at which a Level 1 charger or Level 2 charger is available to the public if the state agency makes all Level 1 chargers or Level 2 chargers available for public use free of any charge.

(3) Notwithstanding sub. (2), a state agency may authorize an electric provider, as defined in s. 16.957 (1) (f), or a person described in s. 196.01 (5) (b) 8. to own and operate an electric vehicle charging station at which a Level 1 charger, Level 2 charger, or Level 3 charger is available to the public on property owned by the state agency.

(4) An electric provider, as defined in s. 16.957 (1) (f), or a person described in s. 196.01 (5) (b) 8. who is authorized under sub. (3) to own and operate an electric vehicle charging station at which a Level 1 charger, Level 2 charger, or Level 3 charger is available to the public on property owned by a state agency, shall charge a reasonable fee for the electricity delivered or placed by all such chargers.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(5) Notwithstanding sub. (2), a state agency may own, operate, manage, or lease an electric vehicle charging station at which a Level 1 charger or a Level 2 charger installed on or after the effective date of this subsection [LRB inserts date], is available to the public if the state agency charges a reasonable fee for the electricity delivered or placed by all such Level 1 chargers and Level 2 chargers.

SECTION 2. 25.40 (1) (L) of the statutes is created to read:

25.40 (1) (L) Electric vehicle charging taxes deposited under s. 77.9973 (2).

SECTION 3. 66.0442 of the statutes is created to read:

66.0442 Electric vehicle charging stations. (1) In this section:

(a) “Level 1 charger” means a device with one or more charging ports and connectors for charging electric vehicles that operates on a circuit up to 120 volts and transfers alternating current electricity to a device in an electric vehicle that converts alternating current to direct current to recharge an electric vehicle battery.

(b) “Level 2 charger” has the meaning given for “AC Level 2” under 23 CFR 680.104

(c) “Level 3 charger” means a direct current fast charger, as defined under 23 CFR 680.104, and analogous successor technologies.

(d) “Local governmental unit” means any of the following:

1. A city, village, town, or county.
2. A school district.
3. A special purpose district in this state.
4. An agency or corporation of an entity described in subd. 1. or 3.
5. A combination or subunit of an entity described in this paragraph.

(e) “Municipal utility” has the meaning given in s. 16.957 (1) (q).

(2) (a) Except as provided in pars. (b) and (c), no local governmental unit may own, operate, manage, or lease an electric vehicle charging station containing a Level 1, Level 2, or Level 3 charger unless the charger is not available to the public and is used solely to charge vehicles owned or leased by the local governmental unit.

(b) A local governmental unit may own, operate, manage, or lease an electric vehicle charging station at which a Level 1 charger or Level 2 charger is available to the public if the local governmental unit makes all Level 1 chargers or Level 2 chargers installed before the effective date of this paragraph [LRB inserts date], available for public use free of any charge.

(c) A local governmental unit may own, operate, manage, or lease an electric vehicle charging station at which a Level 1 charger or a Level 2 charger installed on or after the effective date of this paragraph [LRB inserts date], is available to the public if the local governmental unit charges a reasonable fee for the electricity

delivered or placed by all such Level 1 chargers and Level 2 chargers.

(3) Notwithstanding sub. (2) and subject to sub. (4), a local governmental unit may authorize an electric provider, as defined in s. 16.957 (1) (f), or a person described in s. 196.01 (5) (b) 8. to own and operate an electric vehicle charging station at which a Level 1 charger, Level 2 charger, or Level 3 charger is available to the public on property owned by the local governmental unit.

(3m) An electric provider, as defined in s. 16.957 (1) (f), or a person described in s. 196.01 (5) (b) 8. who is authorized under sub. (3) to own and operate an electric vehicle charging station at which a Level 1 charger, Level 2 charger, or Level 3 charger is available to the public on property owned by a local governmental unit, shall charge a reasonable fee for the electricity delivered or placed by all such chargers.

(4) Notwithstanding sub. (2), a municipal utility existing on the effective date of this subsection [LRB inserts date], may own and operate an electric vehicle charging station that is available to the public and may charge a fee for using the electric vehicle charging station that is based on the amount of kilowatt–hours of electricity that users consume if all of the following apply:

(a) The electric vehicle charging station receives any approvals from the public service commission required under ch. 196.

(b) No tax revenue subsidizes, directly or indirectly, any costs associated with the electric vehicle charging station. This paragraph does not prohibit a municipal utility from using grant money from this state that is distributed after approval by the joint committee on finance under s. 13.10 or the federal government to pay costs associated with constructing an electric vehicle charging station if the purpose of the grant is to expand the availability of electric vehicle charging infrastructure.

(c) Notwithstanding s. 66.0811 (2), no revenue generated by the electric vehicle charging station is transferred to the general fund of the municipality that owns the municipal utility or otherwise directly or indirectly supplements any portion of the municipality’s budget.

(5) No local governmental unit may require a private developer to install an electric vehicle charging station or allow the installation of an electric vehicle charging station on the developer’s property as a condition of granting a building permit, conditional use permit, or other approval. This subsection does not apply to the enforcement of a voluntary contractual agreement between a developer and local governmental unit.

SECTION 4. Chapter 77 (title) of the statutes, as affected by 2023 Wisconsin Act 12, is amended to read:

CHAPTER 77

TAXATION OF FOREST CROPLANDS; REAL ESTATE TRANSFER FEES; SALES AND USE TAXES; COUNTY, MUNICIPALITY, AND SPE-

CIAL DISTRICT SALES AND USE TAXES; MANAGED FOREST LAND; ECONOMIC DEVELOPMENT SURCHARGE; LOCAL FOOD AND BEVERAGE TAX; LOCAL RENTAL CAR TAX; PREMIER RESORT AREA TAXES; STATE RENTAL VEHICLE FEE; DRY CLEANING FEES; ELECTRIC VEHICLE CHARGING TAX

SECTION 5. 77.52 (13) of the statutes is amended to read:

77.52 (13) For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser an electronic or a paper certificate, in a manner prescribed by the department, to the effect that the property, item, good, or service is purchased for resale or is otherwise exempt, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), (66), and (67), and (71).

SECTION 6. 77.53 (10) of the statutes is amended to read:

77.53 (10) For the purpose of the proper administration of this section and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services sold by any person for delivery in this state is sold for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless that person takes from the purchaser an electronic or paper certificate, in a manner prescribed by the department, to the effect that the property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise exempt from the tax, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services that are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), and (67), and (71).

SECTION 7. 77.54 (71) of the statutes is created to read:

77.54 (71) (a) The sales price from the sale of electricity delivered or placed by a Level 3 charger of an electric vehicle charging station, as defined in s. 77.997 (1), into the battery or other energy storage device of an electric vehicle.

(b) The sales price from the sale of electricity delivered or placed by a Level 1 charger or a Level 2 charger installed on or after the day after publication of 2023 Wisconsin Act (this act) [LRB inserts date], of an electric vehicle charging station, as defined in s. 77.997 (1), into the battery or other energy storage device of an electric vehicle.

SECTION 8. Subchapter XIII of chapter 77 [precedes 77.997] of the statutes is created to read:

CHAPTER 77

SUBCHAPTER XIII

ELECTRIC VEHICLE CHARGING TAX

77.997 Definitions. In this subchapter:

(1) “Electric vehicle charging station” means a charging station for electric vehicles containing a Level 3 charger or containing a Level 1 charger, as defined in s. 16.9565 (1) (a), or a Level 2 charger, as defined in s. 16.9565 (1) (b), installed on or after the day after publication of 2023 Wisconsin Act (this act) [LRB inserts date].

(4) “Level 3 charger” has the meaning given in s. 16.9565 (1) (c).

(4m) “Person” includes local governmental units, as defined in s. 66.0442 (1) (d), the state of Wisconsin, and state agencies, as defined in s. 16.9565 (1) (d).

(5) “Residence” means a place where a person resides permanently or temporarily, except for a hotel, as defined in s. 97.01 (7).

77.9971 Electric vehicle charging station registration. (1) Except as provided in sub. (2), no person may deliver or place, or offer to deliver or place, electricity from an electric vehicle charging station owned, operated, managed, or leased by the person into the battery or other energy storage device of an electric vehicle unless the person files with the department an application for a registration. Every application for a registration shall be made upon a form prescribed by the department and shall set forth the name under which the applicant intends to operate, the location of the applicant’s electric vehicle charging stations, and the other information that the department requires.

(2) No registration under this section is required for an electric vehicle charging station located at a residence.

(3) At the time that the department approves a registration under this section, the department shall notify the electric provider, as defined in s. 16.957 (1) (f), serving the area in which the electric vehicle charging station is located of the approved registration for the electric vehicle charging station.

77.9972 Electric vehicle charging tax. (1) (a) Except as provided in par. (b), a tax is imposed at the rate of 3 cents per kilowatt-hour on the electricity delivered or placed by a Level 3 charger of an electric vehicle charging station into the battery or other energy storage device of an electric vehicle.

(am) 1. Except as provided in par. (b), a tax is imposed at the rate of 3 cents per kilowatt-hour on the electricity delivered or placed by a Level 1 charger, as defined in s. 16.9565 (1) (a), or a Level 2 charger, as defined in s. 16.9565 (1) (b), of an electric vehicle charging station into the battery or other energy storage device of an electric vehicle.

2. The tax imposed under this paragraph applies only to a Level 1 charger, as defined in s. 16.9565 (1) (a), or a Level 2 charger, as defined in s. 16.9565 (1) (b), installed on or after the day after publication of 2023 Wisconsin Act (this act) [LRB inserts date].

(b) No tax under this section applies to electricity delivered or placed by a Level 3 charger of an electric vehicle charging station located at a residence.

(c) The tax imposed under this section applies regardless of whether or not a person holding a registration under s. 77.9971 charges for the electricity delivered or placed by the person's Level 3 charger at an electric vehicle charging station.

(2) (a) The tax imposed under this section attaches at the time of the delivery or placement of electricity and shall be paid to the department by the person holding the registration under s. 77.9971 in the form and manner prescribed by the department.

(b) The tax imposed under this section is payable to the department and due by July 31 for the period beginning on January 1 and ending on June 30, and by January 31 for the period beginning on July 1 and ending on December 31.

(3) Biannually, a person holding a registration under s. 77.9971 who owes tax under this section shall file a return in the form and manner prescribed by the department containing all of the following by July 31 for the period beginning on January 1 and ending on June 30 and by January 31 for the period beginning on July 1 and ending on December 31:

(a) The person's name and registration identification number.

(b) The location of each of the person's electric vehicle charging stations.

(c) The total number of kilowatt-hours of electricity delivered or placed by the Level 3 chargers of electric vehicle charging stations into the battery or other energy storage device of an electric vehicle at each location identified in par. (b).

(d) The total number of kilowatt-hours of electricity delivered or placed by the Level 1 chargers, as defined in s. 16.9565 (1) (a), and the Level 2 chargers, as defined in

s. 16.9565 (1) (b), installed on or after the day after publication of 2023 Wisconsin Act (this act) [LRB inserts date], of electric vehicle charging stations into the battery or other energy storage device of an electric vehicle at each location identified in par. (b).

77.9973 Administration. (1) A person holding a registration under s. 77.9971 who owes tax under s. 77.9972 shall maintain records indicating the total number of kilowatt-hours of electricity delivered or placed by each Level 3 charger and by each Level 1 charger, as defined in s. 16.9565 (1) (a), and Level 2 charger, as defined in s. 16.9565 (1) (b), installed on or after the effective date of this subsection [LRB inserts date], of the person during the periods described in s. 77.9972 (3), and shall provide those records to the department upon request.

(2) Section 77.76 (1) and (2), as it applies to the taxes under subch. V, applies to the tax under this subchapter.

(3) The department shall deposit all of the revenue that it collects under this subchapter in the transportation fund under s. 25.40.

SECTION 9. 196.01 (5) (b) 8. of the statutes is created to read:

196.01 (5) (b) 8. A person who satisfies all of the following:

a. The person supplies electricity through the person's electric vehicle charging station to charge electric vehicles.

b. The person charges a fee for using the electric vehicle charging station that is based on the amount of kilowatt-hours of electricity that the user consumes.

c. The person is a retail customer of an electric utility, as defined in s. 16.957 (1) (g), or a retail electric cooperative, as defined in s. 16.957 (1) (t).

d. All of the electricity supplied by the electric vehicle charging station is supplied to the person by the electric utility or electric cooperative that provides service to the person.

e. Other than engaging in the activity described in this subdivision, the person does not directly or indirectly provide electricity to the public.

SECTION 10. Effective dates. This act takes effect on the day after publication, except as follows:

(1) SALES TAX EXEMPTION; ELECTRIC VEHICLE CHARGING TAX. The treatment of ss. 77.52 (13), 77.53 (10), and 77.54 (71), subch. XIII of ch. 77, and ch. 77 (title) takes effect on the first day of the 10th month beginning after publication.