

REPORT
STATE OF WISCONSIN
JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS
2023 SENATE BILL 791

[Introduced by Senator Marklein and Representative VanderMeer]

This report relates to 2023 Senate Bill 791, 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.

GENERAL NATURE OF PROPOSAL

Public Utility Exemption for EV Charging Stations

Current law subjects public utilities to the regulation and oversight of the Public Service Commission (PSC). The term “public utility” is defined to include any person or entity that provides electricity directly or indirectly to the public, unless an exception applies, as specified in the statutes. The bill creates an exception from regulation as a public utility for a person who supplies electricity through an EV charging station to EVs, if the person charges a fee based on the amount of kilowatt-hours of electricity that the user consumes, and if all of the electricity supplied is provided by the person’s electric utility or retail electric cooperative. The bill specifies that a person who supplies electricity under this exception may not otherwise directly or indirectly provide electricity to the public.

State Agency EV Charging Stations

The bill generally prohibits a state agency from owning, operating, managing, or leasing an EV charging station containing a Level 1, Level 2, or Level 3 charger. However, notwithstanding the prohibition, the bill permits a state agency to own, operate, manage, or lease an EV charging station if it is not available to the public and is used solely to charge vehicles owned or leased by a state agency.

Local Governmental Unit EV Charging Stations

The bill generally prohibits a local governmental unit from owning, operating, managing, or leasing an EV charging station containing a Level 1, Level 2, or Level 3 charger. However, notwithstanding the general prohibition, the bill permits a local governmental unit to own, operate, manage, or lease an EV charging station under certain specified conditions, as follows:

- A local governmental unit may own, operate, manage, or lease an EV charging station if it is not available to the public and is used solely to charge vehicles owned or leased by the local governmental unit.
- A local governmental unit may own, operate, manage, or lease an EV charging station at which a Level 1 or Level 2 charger is available, if the local governmental unit makes all Level 1 or Level 2 chargers available for public use free of any charge.

- A municipal utility existing on the date the legislation takes effect may own and operate an EV charging station that is available to the public and may charge a fee based on the amount of kilowatt-hours of electricity that users consume—provided that the EV charging station receives any PSC approvals that are required, and that no revenue generated by the EV charging station is transferred to the general fund of the municipality that owns the municipal utility, and that no tax revenue directly or indirectly subsidizes any costs associated with the EV charging station.
- Finally, a local governmental unit may authorize another person to own and operate an EV charging station at which a Level 1, Level 2, or Level 3 charger is available to the public on the property of the local governmental unit. The person must be a qualified electric provider, under existing statutes, or a person who provides electricity through an EV charging station to EVs under the exception in the bill. The bill also clarifies that if a party to this exception is a municipal utility, the above restrictions relating to PSC approvals, general fund transfers, and tax revenue subsidies will apply.

Imposition of Excise Tax on EV Charging

The bill imposes an excise tax on EV charging. The tax is imposed at a rate of three cents per kilowatt-hour on the electricity delivered or placed, for compensation, by an EV charging station into the battery or other energy storage device of an EV. However, the excise tax does not apply if the electricity comes from an EV charging station located at a residence. Under the bill, a “residence” means a place where a person resides permanently or temporarily, except for a hotel. The excise tax attaches at the time of the delivery or placement of electricity, and it is required to be collected every six months by the Department of Revenue (DOR), as specified in the bill. DOR must deposit all of the revenue from the tax into the transportation fund.

To facilitate the administration of the excise tax, the bill requires individuals to obtain a permit from DOR to provide electricity from an EV charging station under the circumstances described in the bill. The permit requirement does not apply unless the electricity is provided in exchange for compensation, and it does not apply if the EV charging station is at a residence.

Exemption from Sales Tax on EV Charging

The bill creates an exemption from the sales and use tax for the sale of electricity delivered or placed by an EV charging station into the battery or other energy storage device of an EV. This avoids the imposition of both the sales tax and the excise tax created under the bill for the same sale of electricity. The bill also provides that no resale certificate is required for a sale of electricity that is purchased for resale under the exemption created in the bill.

Effective Date

The bill will take effect on the day after publication, except that the provisions imposing the excise tax and creating an exemption from the sales and use tax will take effect on the first day of the 10th month beginning after publication.

LEGALITY INVOLVED

There are no questions of legality involving the tax exemption created in the bill.

FISCAL EFFECT

DOR estimates that the excise tax will result in an **increase of \$3.1 million** in state tax revenue in fiscal year 2025, and that this could increase substantially in future fiscal years. Meanwhile, DOR estimates that the sales tax exemption will result in a **decrease of \$1.3 million** in state tax revenue in fiscal year 2025. The local fiscal effect from this reduction in the sales tax will depend on the location of the charging stations. DOR also estimates a **one-time cost of \$453,090** for updating the tax processing system and ongoing costs of **\$333,660 per year** for two revenue agents, two auditors, and related supplies.

PUBLIC POLICY INVOLVED

The Joint Survey Committee on Tax Exemptions finds that the tax exemption provisions in the bill are good public policy on a vote of Ayes, 8; Noes, 0.

01/12/24

JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS