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# Wisconsin Legislative Council

## AMENDMENT MEMO

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### 2023 Senate Bill 791

### Assembly Amendment 1

This amendment memo describes engrossed 2023 Senate Bill 791 (SB 791), as received from the Senate, and Assembly Amendment 1 (AA 1) to SB 791.

## ENGROSSED SENATE BILL 791 (AS RECEIVED FROM SENATE)

Engrossed SB 791 creates an exemption from public utility regulation for electric vehicle (EV) charging stations; regulates the operation of EV charging stations by governmental units; and creates an excise tax and an exemption from the sales tax on EV charging.

### 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 exemption applies, as specified in the statute. SB 791 creates an exemption from regulation as a public utility for a person that supplies electricity through their 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. SB 791 specifies that a person who supplies electricity under this exemption may not otherwise directly or indirectly provide electricity to the public.

### Governmental Use of EV Charging Stations

#### EV Chargers

SB 791 distinguishes among types of EV chargers for purposes of regulating governmental use of EV charging stations. First, a **Level 1 charger** means a device with one or more charging ports and connectors for charging EVs that operates on a circuit up to 120 volts and transfers alternating current (AC) electricity to a device in an EV that converts AC to direct current (DC) to recharge an EV battery. Second, a **Level 2 charger** has the meaning of “AC Level 2” under federal law, which is a charger that operates on a circuit from 208 volts to 240 volts and transfers AC electricity to a device in an EV that converts AC to DC to recharge an EV battery. Third, a **Level 3 charger** means a “DC fast charger” under federal law (which refers to a charger that enables rapid charging by delivering DC electricity directly to an EV’s battery) and analogous successor technologies.

#### State EV Charging Stations

SB 791 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:

- A state agency may own, operate, manage, or lease a station containing a Level 1, Level 2, or Level 3 charger not available to the public used solely to charge vehicles owned or leased by a state agency.

- A state agency may own, operate, manage, or lease an EV charging station at which a Level 1 or Level 2 charger is available to the public if the agency makes all such chargers available for public use free of charge.
- A state agency may own, operate, manage, or lease an EV charging station at which a Level 1 or Level 2 charger, installed after the effective date of the legislation, is available to the public, if the agency charges a reasonable fee for the electricity supplied by such Level 1 and Level 2 chargers.
- A state agency 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 property owned by the state agency. The person must be a qualified electric provider or supply electricity through an EV charging station to EVs under the exemption from regulation as a public utility created in the bill and must charge a reasonable fee for providing such electricity.

### **Local Governmental EV Charging Stations**

SB 791 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 prohibition:

- A local governmental unit may own, operate, manage, or lease a station containing a Level 1, Level 2, or Level 3 charger not available to the public 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, installed before the effective date of the legislation, is available to the public, if the local governmental unit makes all such chargers available for public use free of charge.
- A local governmental unit may own, operate, manage or lease an EV charging station at which a Level 1 or Level 2 charger, installed after the effective date of the legislation, is available to the public, if the local governmental unit charges a reasonable fee for use of the charger.
- 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 property owned by the local governmental unit. The person must be a qualified electric provider or supply electricity through an EV charging station to EVs under the exemption from regulation as a public utility created in the bill and must charge a reasonable fee for providing such electricity.
- 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. No tax revenue may directly or indirectly subsidize any costs associated with the EV charging station, but this does not prohibit a municipal utility from using grant money from the state distributed after approval by the Joint Committee on Finance or the federal government to expand the availability of EV charging infrastructure.

### **Imposition of Excise Tax**

SB 791 creates an excise tax on EV charging at a rate of three cents per kilowatt-hour on certain electricity delivered or placed by an EV charging station into the battery or other energy storage device of an EV. The tax applies to electricity from any Level 3 charger, as well as electricity from a Level 1 or Level 2 charger installed on or after the effective date of the legislation. SB 791 specifically provides that governmental entities are subject to the excise tax. However, the excise tax does not apply to electricity

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.

To facilitate the administration of the excise tax, SB 791 generally prohibits a person from delivering or placing, or offering to deliver or place, electricity from an EV charging station into the battery or other energy storage device of an EV, unless the person registers with the Department of Revenue (DOR), as specified in the bill. This requirement does not apply to electricity provided by an EV charging station at a residence, nor from any Level 1 or Level 2 charger installed before the effective date of the legislation. The registrant must pay the tax to DOR every six months, and keep certain records in connection with the administration of the tax, as specified in the bill. SB 791 requires DOR to deposit all revenue from the excise tax into the transportation fund.

## **Sales Tax Exemption**

SB 791 creates an exemption from the sales tax for certain electricity delivered or placed by an EV charging station into the battery or other energy storage device of an EV. This applies to electricity from any Level 3 charger, as well as electricity from a Level 1 or Level 2 charger installed on or after the effective date of the legislation. The exemption avoids a situation in which both the sales tax and the excise tax are imposed on the same sale of electricity. In addition, no resale certificate is required for a sale of electricity subject to the sales tax exemption created in the bill.

## **Effective Date**

SB 791 will take effect on the day after publication, except that the provisions relating to the excise tax and the sales tax will take effect on the first day of the 10th month beginning after publication.

## **ASSEMBLY AMENDMENT 1**

AA 1 to engrossed SB 791, as received from the Senate, provides that no local governmental unit may require a private developer to install an EV charging station or allow the installation of an EV charging station on the developer’s property as a condition of granting a building permit, conditional use permit, or other approval. However, this restriction does not apply to the enforcement of a voluntary contractual agreement between a developer and local governmental unit.

## **BILL HISTORY**

On January 9, 2024, Senator Marklein offered SA 1. On the following day, the Senate Committee on Utilities and Technology recommended adoption of SA 1, and passage of SB 791, as amended, on votes of Ayes, 5; Noes, 0. On January 11, 2024, Senator Marklein offered SA 2. On January 16, 2024, Senator Marklein offered SA 1 to SA 2, and the Senate adopted SA 1, SA 1 to SA 2, and SA 2, on voice votes, and passed the bill, as amended, on a vote of Ayes, 30; Noes, 2. On February 22, 2024, Representative Born offered AA 1 to engrossed SB 791, and the Assembly adopted AA 1 to SB 791, on a voice vote, and concurred in SB 791, as amended, on a vote of Ayes, 94; Noes, 2.

For a full history of the bill, visit the Legislature’s [bill history page](#).

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