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# Wisconsin Legislative Council

## AMENDMENT MEMO

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### 2021 Assembly Bill 588

### Assembly Substitute Amendment 2, Assembly Amendment 2 to Assembly Substitute Amendment 2, and Assembly Amendment 3 to Assembly Substitute Amendment 2

## 2021 ASSEMBLY BILL 588

2021 Assembly Bill 588 makes various changes to state law relating to the ownership and operation of electric vehicle (EV) charging facilities.

To begin, the bill establishes a new exemption to the definition of a public utility. Specifically, the bill provides that a person who owns, operates, manages, leases, or controls an EV charging facility is not a public utility, provided that all of the following criteria are met:

1. Any fee charged for use of the charging facility is a flat fee; is based on the amount of time a user parks near or is connected to the charging facility; or is based on the amount of electricity the user consumes.
2. All of the electricity that a user receives by connecting to the charging facility is obtained from the electric provider serving the area where the facility is located.
3. The person does not otherwise directly or indirectly provide electricity to the public for a fee.

Additionally, the bill directs the Public Service Commission (PSC) to prohibit electric providers from restricting a customer from charging a fee for the use of a customer's charging facility, provided that the customer satisfies the first and second criteria listed above. However, this directive to the PSC does not apply if a customer's charging facility was purchased using a grant from an electric provider or if a customer's charging facility is partially or entirely owned by an electric provider.

Assembly Bill 588 also prohibits a political subdivision (a city, village, town, or county) from owning, operating, managing, leasing, or controlling a publicly available EV charging facility, unless authorized by the governing body of the political subdivision.

Finally, the bill prohibits the Department of Transportation (DOT) from authorizing the installation or operation of a publicly available charging facility or a charging facility located at a wayside, unless DOT submits a request to the Joint Committee on Finance (JFC) for approval, and JFC approves the request.

## ASSEMBLY SUBSTITUTE AMENDMENT 2

Assembly Substitute Amendment 2 makes various changes to the bill. To begin, the substitute amendment modifies the criteria that a person must meet in order for the person to satisfy the bill's exemption to the definition of a public utility. Specifically, the substitute amendment further provides

that a fee charged for use of a charging facility may be based on the cost or rate charged to the customer by the customer's electric provider.<sup>1</sup> The amendment also adds a criterion that would require a person to notify their electric provider about the charging facility in order to qualify for the exemption to the definition of a public utility.

The substitute amendment generally preserves the bill's provision that directs the PSC to prohibit any electric provider from restricting a customer from charging a fee for use of a customer's EV charging facility. However, the substitute amendment modifies the exemption to this provision related to charging facilities partially or entirely owned by an electric provider. Specifically, the substitute amendment clarifies that an electric provider incurring infrastructure or interconnections costs related to a charging facility does not confer any ownership of the charging facility to the electric provider.

The substitute amendment replaces the bill's provisions specific to DOT with more general restrictions on actions by state agencies. Specifically, the substitute amendment generally prohibits a state agency from owning, operating, managing, leasing, or controlling an EV charging facility. Notwithstanding this restriction, the bill provides that a state agency may own or operate a charging facility that is not available to the public if the sole purpose of the charging facility is charging vehicles owned or leased by a state agency.

The substitute amendment removes the bill's provision that would allow a political subdivision to own, operate, manage, lease, or control a publicly available EV charging facility if authorized by the governing body of the political subdivision. Instead, the substitute amendment provides that no political subdivision may own, operate, manage, lease, or control a charging facility, except as follows:

- A political subdivision may authorize an electric provider, or any person who is subject to the public utility exemption created in the substitute amendment, to own and operate an EV charging facility that is available to the public on property owned by the political subdivision.
- A political subdivision may own or operate an EV charging facility that is not available to the public if the sole purpose of the charging facility is charging vehicles owned or leased by a political subdivision.
- A municipal utility existing on the date the legislation takes effect may own and operate a publicly available EV charging facility if certain conditions specified in the substitute amendment are met.

Finally, the substitute amendment contains a nonstatutory provision applicable to any political subdivision that owns or operates an EV charging facility installed before the effective date of the legislation. The provision requires the political subdivision to register with, and provide proof of ownership or installation of all such charging facilities to, the PSC, within six months of the effective date of the legislation.

## **ASSEMBLY AMENDMENT 2 TO ASSEMBLY SUBSTITUTE AMENDMENT 2**

Assembly Amendment 2 to Assembly Substitute Amendment 2 modifies the substitute amendment by replacing the term "political subdivision" with "local governmental unit" throughout the substitute amendment. The term local governmental unit is defined as a city, village, town, or county; a school district; a special purpose district; an agency or subunit of any of the foregoing; or a combination or subunit of any of the foregoing.

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<sup>1</sup> This modification is also mirrored in the substitute amendment's provision directing the PSC to prohibit electric providers from restricting a customer from charging a fee for use of an EV charging facility.

## **ASSEMBLY AMENDMENT 3 TO ASSEMBLY SUBSTITUTE AMENDMENT 2**

Assembly Amendment 3 to Assembly Substitute Amendment 2 narrows the substitute amendment's restrictions on activities that may be undertaken by state agencies. While the substitute amendment generally prohibits a state agency from owning, operating, managing, leasing, or controlling an EV charging facility, Assembly Amendment 3 to the Assembly Substitute Amendment 2 removes the prohibition on "controlling" an EV charging facility.

### **BILL HISTORY**

Assembly Substitute Amendment 2 and Assembly Amendment 2 to Assembly Substitute Amendment 2 were offered by Representative VanderMeer on December 6, 2021, and January 19, 2022, respectively. On January 26, 2022, Representative Kuglitsch offered Assembly Amendment 3 to Assemble Substitute Amendment 2. On February 3, 2022, the Assembly Committee on Energy and Utilities recommended adoption of each of the three amendments on votes of Ayes, 10; Noes, 5. The bill was then recommended for passage, as amended, on a vote of Ayes, 10; Notes, 5.

BK:jal