



State of Wisconsin
2023 - 2024 LEGISLATURE

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2023 SENATE BILL 791

December 8, 2023 - Introduced by Senators MARKLEIN, QUINN, BALLWEG, BRADLEY, FELZKOWSKI, KNODL, STAFSHOLT, TAYLOR and TESTIN, cosponsored by Representatives VANDERMEER, GUSTAFSON, OLDENBURG, BRANDTJEN, DUCHOW, GOEBEN, GUNDRUM, HURD, MURSAU, PETERSEN and TRANEL. Referred to Committee on Utilities and Technology.

1 **AN ACT to amend** chapter 77 (title), 77.52 (13) and 77.53 (10); and **to create**
2 16.9565, 25.40 (1) (L), 66.0442, 77.54 (71), subchapter XIII of chapter 77
3 [precedes 77.997] and 196.01 (5) (b) 8. of the statutes; **relating to:** exemptions
4 from public utility regulation regarding electric vehicle charging stations,
5 installation and operation of electric vehicle charging stations by state agencies
6 or local governmental units, and imposing an excise tax on electric vehicle
7 charging.

Analysis by the Legislative Reference Bureau

This bill exempts from regulation as a public utility a person who supplies electricity through an electric vehicle charging station to electric vehicles, if all of the electricity supplied is provided by the person's electric utility or retail electric cooperative. Under current law, a person who directly or indirectly provides electricity to the public is regulated as a public utility by the Public Service Commission.

The bill also prohibits a local governmental unit that does not operate an electric utility from owning, operating, managing, or leasing an electric vehicle charging station at which Level 1 or Level 2 chargers are available to the public, unless all Level 1 or Level 2 charges are available for public use free of any charge. However, the bill also allows a local governmental unit to own, operate, manage, or

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lease an electric vehicle charging station containing a Level 1, Level 2, or Level 3 charger if the charger 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 also authorize another person to own and operate an electric vehicle charging station available to the public on its property. Under the bill, a municipal electric utility may own and operate an electric vehicle charging station that is available to the public and may charge a fee for its use if no tax revenue subsidizes the charging station and if no revenue generated by the charging station is transferred to the general fund of the municipality that owns the municipal electric utility.

Also, under the bill, a state agency is prohibited from owning, operating, managing, or leasing 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.

The bill also imposes an excise tax on electric vehicle charging. The tax is imposed at a rate of 3 cents per kilowatt-hour on the electricity delivered or placed, for compensation, by an electric vehicle charging station into the battery or other energy storage device of an electric vehicle. The tax does not apply to electricity delivered or placed for no charge or by an electric vehicle charging station located at a residence. Under the bill, a "residence" is a place where a person resides permanently or temporarily, except for a hotel. Any person who, for compensation, delivers or places electricity from an electric vehicle charging station, other than an electric vehicle charging station located at a residence, owned, operated, managed, or leased by the person into the battery or other energy storage device of an electric vehicle must obtain a permit from the Department of Revenue. DOR enforces and collects the tax, and must deposit all of the revenue that it collects from the tax into the transportation fund. The bill also exempts the sale of electricity delivered or placed by an electric vehicle charging station into the battery or other energy storage device of an electric vehicle from the sales and use tax.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 16.9565 of the statutes is created to read:
- 2 **16.9565 Electric vehicle charging stations.** (1) In this section:
- 3 (a) "Level 1 charger" means a device with one or more charging ports and
- 4 connectors for charging electric vehicles that operates on a circuit up to 120 volts and

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1 transfers alternating current electricity to a device in an electric vehicle that
2 converts alternating current to direct current to recharge an electric vehicle battery.

3 (b) “Level 2 charger” has the meaning given for “AC Level 2” under 23 CFR
4 680.104

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

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

10 **(2)** No state agency may own, operate, manage, or lease an electric vehicle
11 charging station containing a Level 1, Level 2, or Level 3 charger unless the charger
12 is not available to the public and is used solely to charge vehicles owned or leased by
13 a state agency.

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

15 25.40 (1) (L) Electric vehicle charging taxes deposited under s. 77.9973 (2).

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

17 **66.0442 Electric vehicle charging stations.** (1) In this section:

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

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

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

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

2 1. A city, village, town, or county.

3 2. A school district.

4 3. A special purpose district in this state.

5 4. An agency or corporation of an entity described in subd. 1. or 3.

6 5. A combination or subunit of an entity described in this paragraph.

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

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

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

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

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

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

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

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

13 **SECTION 4.** Chapter 77 (title) of the statutes, as affected by 2023 Wisconsin Act
14 12, is amended to read:

CHAPTER 77**TAXATION OF FOREST CROPLANDS; REAL ESTATE TRANSFER FEES;****SALES AND USE TAXES; COUNTY, MUNICIPALITY, AND SPECIAL****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**

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

24 77.52 (13) For the purpose of the proper administration of this section and to
25 prevent evasion of the sales tax it shall be presumed that all receipts are subject to

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1 the tax until the contrary is established. The burden of proving that a sale of tangible
2 personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services
3 is not a taxable sale at retail is upon the person who makes the sale unless that
4 person takes from the purchaser an electronic or a paper certificate, in a manner
5 prescribed by the department, to the effect that the property, item, good, or service
6 is purchased for resale or is otherwise exempt, except that no certificate is required
7 for the sale of tangible personal property, or items, property, or goods under sub. (1)
8 (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10),
9 (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46),
10 (51), (52), (66), ~~and (67)~~, and (71).

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

12 77.53 (10) For the purpose of the proper administration of this section and to
13 prevent evasion of the use tax and the duty to collect the use tax, it is presumed that
14 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
15 (d), or taxable services sold by any person for delivery in this state is sold for storage,
16 use, or other consumption in this state until the contrary is established. The burden
17 of proving the contrary is upon the person who makes the sale unless that person
18 takes from the purchaser an electronic or paper certificate, in a manner prescribed
19 by the department, to the effect that the property, or items, property, or goods under
20 s. 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise
21 exempt from the tax, except that no certificate is required for the sale of tangible
22 personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or
23 services that are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n),
24 (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), ~~and (67)~~, and (71).

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

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

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

CHAPTER 77**SUBCHAPTER XIII****ELECTRIC VEHICLE CHARGING TAX**

9 **77.997 Definitions.** In this subchapter:

10 (1) “Electric vehicle charging station” means a charging station for electric
11 vehicles containing a Level 1 charger, a Level 2 charger, or a Level 3 charger.

12 (2) “Level 1 charger” has the meaning given in s. 16.9565 (1) (a).

13 (3) “Level 2 charger” has the meaning given in s. 16.9565 (1) (b).

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

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

17 **77.9971 Electric vehicle charging station permit.** (1) Except as provided
18 in sub. (2), no person may, for compensation, deliver or place, or offer to deliver or
19 place, electricity from an electric vehicle charging station owned, operated,
20 managed, or leased by the person into the battery or other energy storage device of
21 an electric vehicle unless the person files with the department an application for a
22 permit. Every application for a permit shall be made upon a form prescribed by the
23 department and shall set forth the name under which the applicant intends to
24 operate, the location of the applicant’s electric vehicle charging stations, and the
25 other information that the department requires.

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

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

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

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

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

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

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

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

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

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1 **77.9973 Administration.** (1) A person holding a permit under s. 77.9971 who
2 owes tax under s. 77.9972 shall maintain records indicating the total number of
3 kilowatt-hours of electricity delivered or placed by each Level 1 charger, Level 2
4 charger, and Level 3 charger of the person during the periods described in s. 77.9972
5 (3), and shall provide those records to the department upon request.

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

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

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

11 196.01 (5) (b) 8. A person who satisfies all of the following:

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

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

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

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

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

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

