



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 791/Assembly Bill 846: Electric Vehicle Infrastructure Program and Excise Tax

Senate Bill (SB) 791 was introduced on December 8, 2023, and referred to the Senate Committee on Utilities and Technology, with a public hearing held for the bill on December 19, 2024. Senate Amendment 1 to SB 791 was offered on January 9, 2024 and adopted, 5-0 on January 10.

Assembly Bill (AB) 846 was introduced on December 22, 2023, and referred to the Assembly Committee on Energy and Utilities, with a public hearing held for the bill on January 9, 2024. Assembly Amendment 1 to AB 846 was offered on January 9, 2024 and is identical to SA 1.

BACKGROUND

The November, 2021, Bipartisan Infrastructure Law includes the five-year authorization of a newly-created National Electric Vehicle Infrastructure (NEVI) program to provide funding to states to deploy electric vehicle (EV) charging infrastructure. The NEVI program includes both a formula and discretionary component. Wisconsin is eligible to receive an estimated \$78.7 million in NEVI program formula funds through federal fiscal year 2026. The Department of Transportation (DOT) intends to host a yearly RFP process throughout the duration of the NEVI Program. The initial RFP was released by DOT on January 2, 2024, with proposals due to the Department by April 1, 2024.

The Federal Highway Administration (FHWA) has regulations setting minimum standards and requirements specific to the use of NEVI formula grant program funds for the construction of publicly accessible EV chargers. The formula grant program is specifically intended to build out the EV charging system along federally-designated alternative fuel corridors. Currently, Wisconsin's alternative fuel corridor federal designations include portions of I-90, I-94, I-39, I-41, I-43, I-535, U.S. 151, U.S. 53, U.S. 51, WIS 29, U.S. 2, and U.S. 141, and all of U.S. 8 and U.S. 41. Federal guidance further specifies that new EV charging infrastructure locations be spaced a maximum

distance of 50 miles apart along designated alternative fuel corridors and that EV charging infrastructure be located, in general, no greater than one mile from interstate exits or highway intersections along these corridors.

To qualify for NEVI formula funding, states were required to submit an annually updated EV infrastructure deployment plan to FHWA describing how the state intends to use its apportioned NEVI formula funds. The Department of Transportation (DOT) was notified by FHWA on September 14, 2022, that Wisconsin's initial state plan was approved for implementation. Subsequently, on September 29, 2023, the FHWA approved the state's required 2023 NEVI plan update. DOT intends to host a yearly RFP process throughout the duration of the NEVI Program. The initial RFP was released by DOT on January 2, 2024, with proposals due to the Department by April 1, 2024.

Under federal law, Title 23 CFR Part 680.116, charging stations funded under the NEVI Program must sell electricity by kilowatt-hour (kWh). This requirement applies to all NEVI funds (formula and discretionary) utilized to support the construction of electric vehicle charging stations. Federal law specifies that if the price for charging is not currently based on the price for electricity to charge an electric vehicle in \$/kWh, this requirements must be satisfied within one year from February 28, 2023.

Under existing state law, with certain exceptions, a person who directly or indirectly provides electricity to the public is regulated as a public utility by the Public Service Commission. The Department has stated that language providing an exemption to the definition of a utility, for the sale of electricity by an EV charging station, is required for the Department to meet the NEVI program requirements. DOT states that after February 28, 2024, the Department will be unable to fund projects under the NEVI Program until a kilowatt hour sale metric is allowable.

BILL SUMMARY

Exemption from Regulation as a Public Utility. Exempt from the definition of public utility, a person who satisfies all of the following: (a) the person supplies electricity through the person's EV charging station to charge electric vehicles; (b) the person charges a fee for using the EV 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 or a retail electric cooperative, as defined under current law; (d) all of the electricity supplied by the EV charging station is supplied to the person by the electric utility or electric cooperative that provides service to the person; and (e) other than supplying electricity through the person's EV charging station, the person does not directly or indirectly provide electricity to the public. Under current law, with certain exceptions, a person who directly or indirectly provides electricity to the public is regulated as a public utility by the Public Service Commission.

Charging Station Permits. Specify that no person may, for compensation, 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 of Revenue (DOR) an application for a permit. Require

every application for a permit to be made on a form prescribed by the Department and state the name under which the applicant intends to operate, the location of the applicant's EV charging stations, and the other information that DOR requires. Specify that no permit would be required for an EV charging station located at a residence, defined as a place where a person resides permanently or temporarily, except for a hotel. Define “electric vehicle charging station” to mean a charging station for electric vehicles containing a Level 1 charger, a Level 2 charger, or a Level 3 charger.

Electric Vehicle Charging Station Excise Tax. Create a tax at the rate of 3 cents per kilowatt-hour to be imposed on the electricity delivered or placed, for compensation, by an EV charging station into the battery or other energy storage device of an electric vehicle. Specify that no tax would apply to electricity delivered or placed by an electric vehicle charging station located at a residence. Require that the EV charging station excise tax would be attached at the time of the delivery or placement of electricity and be paid to DOR by the person holding the EV charging station permit in the form and manner prescribed by the Department.

Specify that the EV charging station excise tax to be payable to and filed to DOR 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. Require a permit holder who owes tax to file a return that contains all of the following (a) the person's name and permit identification number; (b) the location of each of the person's EV charging stations; and (c) the total number of kilowatt-hours of electricity delivered or placed by EV charging stations into the battery or other energy storage device of an electric vehicle at each station location.

Specify that the electric vehicle charging excise tax would be effective on the first day of the 10th month beginning after publication of the act.

EV Charging Station Permit and Excise Tax Administration. Require that a person holding an EV charging station permit, who owes EV charging station excise taxes, maintain records indicating the total number of kilowatt-hours of electricity delivered or placed by each Level 1 charger, Level 2 charger, and Level 3 charger during the two biennial reporting periods (January 1 through June 30, and July 1 through December 31). Specify that a person holding an EV charging station permit, who owes EV charging station excise taxes, would be required to provide those records to DOR upon request. Provide DOR with the full power to levy, enforce, and collect the electric vehicle charging excise taxes and take any action, conduct any proceeding, impose interest and penalties, and in all respects proceed as it is authorized to proceed for the existing state, county, municipality, and special district sales and use taxes. Specify that any determination of the Department regarding the taxes would be subject to judicial and administrative review

Require DOR to deposit all EV charging station excise tax revenue into the state's segregated transportation fund. Specify that these deposits would be a revenue to the transportation fund.

Local Government EV Charging Stations. Specify that no local governmental unit may own, operate, manage, or lease an EV 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. Allow a local governmental unit may to own, operate, manage, or

lease an EV 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 available for public use free of any charge.

Specify that a local governmental unit may authorize an electric utility or retail electric cooperative, or a person exempted from regulation as a public utility under the bill, 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.

Define “local governmental unit” to mean any of the following: (a) a city, village, town, or county; (b) a school district; (c) a special purpose district in this state; (d) an agency or corporation of a city, village, town, county, or special purpose district in this state; and (e) a combination or subunit of an entity described in this provision.

Municipal Utility Regulation. Provide that a municipal utility existing on the effective date of the bill, may own and operate an EV charging station that is available to the public and may charge a fee for using the EV charging station that is based on the amount of kilowatt-hours of electricity that users consume if all of the following apply: (a) the EV charging station receives any approvals from the Public Service Commission required under current law regulating public utilities; (b) no tax revenue subsidizes, directly or indirectly, any costs associated with the EV charging station. Specify that this provision would 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 EV charging station if the purpose of the grant is to expand the availability of EV charging infrastructure; and (c) notwithstanding current law regarding the use of municipal public utility revenues, no revenue generated by the EV 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.

Define a “municipal utility”, as under current law, to mean an electric utility that is owned wholly by a municipality and that owns a retail distribution system.

State Agency Ownership Prohibition. Prohibit a state agency from owning, operating, managing, or leasing an EV 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. Define “state agency” to mean 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.

Sales Tax Exemption. Wisconsin imposes a general sales and use tax at a rate of five percent on the sales price or purchase price of taxable goods and services sold or used in this state, with certain exceptions. For example, sales of electricity are generally exempt from the sales tax when: (a) used in manufacturing; (b) used in farming; and (c) used for residential purposes during the months of November through April. In addition, a sales tax exemption exists for sales of motor vehicle fuels that are subject to the state motor fuel excise tax.

Provide a sales tax exemption for sales of electricity delivered or placed by an EV charging station into the battery or other energy storage device of an electric vehicle. Specify that the sales tax exemption would be effective on the first day of the 10th month beginning after publication of the act.

EV Charger Definitions. Define the following under both municipal and state law: (a) "Level 1 charger" would mean 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" would have the meaning given for "AC Level 2" as defined under federal law; and (c) "Level 3 charger" would mean a direct current fast charger, as defined under federal law, and analogous successor technologies. Under federal law, AC Level 2 means a charger that operates on a circuit from 208 volts to 240 volts and transfers alternating-current (AC) electricity to a device in an electric vehicle that converts alternating current to direct current to recharge an battery. Under federal law, a direct current fast charger means a charger that enables rapid charging by delivering direct-current (DC) electricity directly to an electric vehicle's battery.

SENATE AMENDMENT 1 to SB 791

State Agency Ownership. Allow a state agency to own, operate, manage, or lease an EV 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.

Allow a state agency to authorize an electric utility or retail electric cooperative, or a person who supplies electricity through the person's EV charging station, to own and operate an EV 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.

Imposition of EV Excise Tax. Delete references to Level 1 and Level 2 chargers, so that the excise tax would only be imposed on the sale of electricity from Level 3 charging stations. Delete the requirement that a person holding an EV charging station registration, who owes excise tax, maintain records indicating the total number of kilowatt-hours of electricity delivered or placed by Level 1 or Level 2 chargers. For the purposes of imposing the EV charging station excise tax, SB 791 defines "electric vehicle charging station" to mean a charging station for electric vehicles containing a Level 1 charger, a Level 2 charger, or a Level 3 charger.

Delete the requirement that the EV charging station excise tax be imposed only on the electricity delivered or placed in an electric vehicle, for compensation. Instead, SA 1 would impose the excise tax on all electricity delivered or placed in an electric vehicle, for compensation or not for compensation, by a Level 3 charger. Specify that the EV charging station excise tax applies regardless of whether or not a person holding a EV charging station registration charges for the electricity delivered or placed by the person's Level 3 charger at an EV charging station. Specify that the excise tax on Level 3 charging would not apply to Level 3 charging at a place of residence.

Sales Tax Exemption. Specify that the EV charging sales tax exemption only applies to the

sale of electricity delivered or placed by a Level 3 charger of an EV charging station. Under SB 791, the exemption would apply to the sale of electricity delivered or placed by a Level 1, Level 2, and Level 3 chargers.

EV Charging Station Permit Requirements. For the purposes of applying for an EV charging station permit and remitting taxes to DOR, define “person” to include the state of Wisconsin, and state agencies and local governmental units. Under SB 791, "person" is not defined when referring to a person applying for and holding a permit.

Delete all references to "permit" when referencing an EV charging station permit, and replace with the term "registration", such as an EV charging station registration.

Delete the requirement that a Level 3 charging station permit be required only for persons that deliver or place electricity from an EV charging station for compensation. Instead, under SA 1, all persons that deliver or place Level 3 electricity at an EV charging station would be required to apply for a permit, whether or not for compensation.

Require DOR, at the time that the Department approves an EV charging station registration, to notify the electric provider serving the area in which the electric vehicle charging station is located of the approved registration for the EV charging station.

SB 791/AB 846 FISCAL EFFECT

Excise Tax Revenue. In its fiscal estimate to the bill, the Department of Transportation (DOT) estimates revenue from the 3-cent per kilowatt-hour charging station excise tax to be \$15,900 to \$23,800 per month, at the start of calendar year 2024, or up to \$286,000 for all of 2024. DOT further indicates that assuming the growth rate in EV ownership remains constant, estimated revenue would range from \$211,400 to \$314,100 in 2024-25 and \$285,100 to \$427,600 in 2025-26. To arrive at this estimate, the Department assumes that the average efficiency for an electric vehicle is 3.5 miles per kilowatt-hour, and that the annual vehicle miles traveled (VMT) for the average electric vehicle is 5,300 miles per year, which is significantly lower than the average annual VMT of gas and diesel vehicles which is typically between 11,000 and 14,000 miles. In addition, DOT indicates that since charging an electric vehicle at home is more cost-effective and convenient for the consumer, a 20% to 30% usage of public charging stations was assumed by the Department.

In its fiscal estimate to the bill, DOR estimates revenue from the 3-cent per kilowatt-hour charging station excise tax to be \$3.1 million in 2024-25. However, the Department notes that this estimate will be less to the extent that EV owners charge their vehicles at home. Using the same 20% to 30% public EV charging station usage assumption as used by DOT in their fiscal estimate, would reduce DOR's estimate to a range of \$620,000 to \$930,000. This range of estimated revenue is still higher than the estimates submitted by DOT, due to DOT's lower average annual VMT of 5,300 for EVs, as compared to an average annual VMT of 13,476 used by DOR. While actual data on EV specific VMT is not available, DOT's estimate acknowledges that the average VMT of an EV owner may be lower than the average VMT for all vehicles, which is typically between 11,000 and 14,000, as noted earlier. Perhaps this is due to shorter trips associated with "battery range anxiety" among

current EV owners.

Sales Tax Exemption. DOR estimates that the sales and use tax exemption would reduce sales tax revenue by \$1,300,000 annually. Assuming the bills are enacted in February and the exemption were to take effect in December, it is estimated that this exemption would reduce sales tax revenues by \$800,000 in 2024-25 and \$1,300,000 in 2025-26. However, based on differences in estimated miles driven and usage of public chargers, DOT estimates that the reduction in sales tax revenue could be lower. Using DOT assumptions, it is estimated that the exemption would reduce sales tax revenues by between \$50,000 and \$80,000 in 2024-25 and by between \$120,000 and \$180,000 in 2025-26.

Administrative Costs. DOR estimates a one-time administrative cost in 2024-25 of \$453,090 to update the state's tax processing system. DOR estimates an ongoing administrative expense, beginning in 2024-25, of \$333,660 for two revenue agents, two auditors, and related supplies to administer the EV excise tax. DOR states that it cannot absorb these costs with current resources to administer the tax. Neither SB 791 or SB 792 provide any funding or create an administrative appropriation for DOR to administer the tax.

The Department of Agriculture, Trade and Consumer Protection's (DATCP) Bureau of Weights and Measures (BWM) is responsible for the inspection and oversight of gas pumps, fuel quality, and pump safety in Wisconsin. BWM also verifies the proper functioning of other devices used in commercial activity, including price scanners, scales, liquid dispensers and timers. DATCP reports that BWM would be responsible for regulating any non-public utilities supplying electricity on a kilowatt-hour basis through EV charging stations as provided under the bill. DATCP contends that new equipment would be required to perform inspections on EV charging stations, and the Department estimates a one-time cost of \$210,000, with ongoing expenses for maintenance covered by existing agency resources.

In addition, DATCP anticipates the need for additional staff to accommodate an increasing amount of inspections. DATCP contends that BWM would require 2.0 additional positions, and \$178,500 annually for salary and fringe benefits. No additional positions or funding would be provided under the bill, and DATCP would absorb additional costs and inspections under existing budget authority. BWM activities are primarily segregated petroleum inspection fund and program revenues from fees on regulated entities and devices.

In its fiscal estimate to the bill, the Department of Administration (DOA) indicates that the bill provision prohibiting state agencies from allowing public use of state-owned EV charging stations would require DOA to modify the agency's current practice of owning charging stations installed in state parking garages. Currently, these state-owned charging stations are for state employees to use to charge their private vehicles, at the employee's expense. SA 1 would allow a state agency to authorize an electric utility or retail electric cooperative, or a person who supplies electricity through the person's EV charging station, to own and operate a Level 1, Level 2, or Level 3 charger which is available to the public on property owned by the state agency.

SA 1 TO SB 791 FISCAL EFFECT

SA 1 would modify the EV charging station excise tax created under SB 791 to apply regardless of whether or not a person holding an EV charging station registration charges for the electricity delivered or placed by the person's Level 3 charger. In addition, when referring to a person applying for and holding an EV charging station registration, SA 1 would define "person" to include the state of Wisconsin, state agencies and local governmental units. By expanding the imposition of the excise tax to charging that is done without compensation, and by including local units of government as subject to the EV charging station registration requirements, SA 1 expands the imposition of the excise tax to state and local fleet vehicles, as well as to transit agencies which use Level 3 charging to charge their electric bus fleets. Currently, state and local governments must pay the state's motor vehicle fuel tax when fueling their fleet vehicles. However, local governments providing mass transit are currently exempt from having to pay the state's motor vehicle fuel tax. Although electric buses are currently only used in Madison, Milwaukee and Racine, the trend toward replacing gas with electric-powered buses largely mirrors that of the current transition in the automobile market. No estimate for the additional revenue that may be generated by the SA 1 imposition of the excise tax on the electricity provided to state and local fleet vehicles and to mass transit vehicles can be determined at this time.

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