
Wisconsin Legislative Council

ACT MEMO



Prepared by: Brian Larson, Principal Attorney

March 21, 2024

2023 Wisconsin Act 121 [2023 Senate Bill 791]

Electric Vehicle Charging Stations

2023 Wisconsin Act 121 (Act 121) exempts electric vehicle (EV) charging stations from regulation as public utilities; regulates the use of EV charging stations by governmental units; creates an excise tax on certain electricity delivered through EV charging stations; and creates a sales tax exemption for certain electricity delivered through EV charging stations.

PUBLIC UTILITY EXEMPTION FOR EV CHARGING STATIONS

Current law subjects public utilities to oversight by 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. Act 121 exempts a person who supplies electricity to EVs through an EV charging station from regulation as a public utility, if they charge a fee based on the kilowatt-hours of electricity that the user consumes, and if all the electricity supplied is provided by the person’s electric utility or retail electric cooperative. Act 121 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

Act 121 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 given for “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

Act 121 prohibits a state agency from owning, operating, managing, or leasing an EV charging station containing a Level 1, Level 2, or Level 3 charger, except as follows:

- A state agency may own, operate, manage, or lease an EV charging station containing a Level 1, Level 2, or Level 3 charger if it is not available to the public and is 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 state 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 on or after March 22, 2024, is available to the public if the agency charges a reasonable fee for the electricity supplied by such 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 act and must charge a reasonable fee for providing such electricity.

Local Governmental EV Charging Stations

Act 121 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, except as follows:

- A local governmental unit may own, operate, manage, or lease an EV charging station containing a Level 1, Level 2, or Level 3 charger 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 installed before March 22, 2024, 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 on or after March 22, 2024, is available to the public if the local governmental unit charges a reasonable fee for the electricity supplied by such chargers.
- 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 act and must charge a reasonable fee for providing such electricity.
- A municipal utility existing on March 22, 2024, 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. No revenue generated by the EV charging station may be transferred to the general fund of the municipality, and no tax revenue may directly or indirectly subsidize any costs associated with the EV charging station. However, this does not prohibit a municipal utility from using grant money to expand the availability of EV charging infrastructure, as specified in the act.

In addition, Act 121 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 agreement, as specified in the act.

EXCISE TAX

Act 121 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 March 22, 2024. Act 121 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 act, a "residence" means a place where a person resides permanently or temporarily, except for a hotel.

To facilitate the administration of the excise tax, Act 121 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 act. 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 March 22, 2024. The registrant must pay the excise tax to DOR every six months, and keep certain records in connection with the administration of the tax, as specified in the act. Act 121 requires DOR to deposit all revenue from the excise tax into the transportation fund.

SALES TAX EXEMPTION

Act 121 creates a sales tax exemption 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 March 22, 2024. In addition, no resale certificate is required for a sale of electricity subject to the sales tax exemption created in the act.

Effective date: Act 121 takes effect on March 22, 2024, except that the excise tax and sales tax changes take effect on January 1, 2025.

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

BL:kp;ksm