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# Wisconsin Legislative Council

## AMENDMENT MEMO

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### 2023 Assembly Bill 846

### Assembly Amendments 1 and 2

2023 Assembly Bill 846 (AB 846) 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.

## 2023 ASSEMBLY BILL 846

### 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 exception applies, as specified in the statute. AB 846 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. AB 846 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

#### Definitions

AB 846 identifies different categories of governmental units for purposes of regulating their use of EV charging stations. Under the bill:

- **State agency** means 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.
- **Local governmental unit** means a city, village, town, county, or special purpose district in this state; as well as an agency or corporation of any such entity; or a school district; or a combination or subunit of any such entity.
- **Municipal utility** means an electric utility that is owned wholly by a municipality and that owns a retail distribution system.

AB 846 distinguishes between types of EV charging stations for purposes of regulating their use by governmental units. Under the bill:

- **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.

- **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.
- **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 Agency EV Charging Stations**

AB 846 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, the bill permits a state agency to own, operate, manage, or lease a station containing a Level 1, Level 2, or Level 3 charger that is not available to the public and is used solely to charge vehicles owned or leased by a state agency.

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

AB 846 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 general prohibition, the bill permits a local governmental unit to own, operate, manage, or lease an EV charging station under the following conditions:

- A local governmental unit may own, operate, manage, or lease a station containing a Level 1, Level 2, or Level 3 charger that is not available to the public and is used solely to charge vehicles owned or leased by the local governmental unit.
- Also, a local governmental unit 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 local governmental unit makes all such chargers available for public use free of charge.
- 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. Also, AB 846 directs that 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 this state distributed after approval by the Joint Committee on Finance (JCF) or the federal government to expand the availability of EV charging infrastructure.
- Finally, 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. AB 846 states that if a party is a municipal utility, the above restrictions relating to PSC approvals, general fund transfers, and tax revenue subsidies will apply.

### **Imposition of Excise Tax**

AB 846 creates an excise tax on EV charging. The tax is imposed at a rate of three cents per kilowatt-hour on the electricity delivered or placed, for compensation, by an EV charging station into the battery or other energy storage device of an EV. However, the excise tax does not apply if the electricity comes

from an EV charging station located at a residence. Under AB 846 a “residence” means a place where a person resides permanently or temporarily, except for a hotel.

To facilitate the administration of the excise tax, AB 846 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 files an application for a permit with the Department of Revenue (DOR). This requirement does not apply to electricity provided without compensation or by an EV charging station located at a residence.

The excise tax attaches at the time of the delivery or placement of electricity into the battery or other energy storage device of an EV. The permit holder 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. AB 846 requires DOR to deposit all revenue from the excise tax into the transportation fund.

## **Sales Tax Exemption**

AB 846 creates an exemption from the sales and use tax for the sale of electricity delivered or placed by an EV charging station into the battery or other energy storage device of an EV. This avoids a situation in which both the sales tax and the excise tax are imposed on the same sale of electricity. In addition, AB 846 provides that no resale certificate is required for a sale of electricity delivered or placed by an EV charging station into the battery or other storage device of an EV.

## **Effective Date**

AB 846 will take effect on the day after publication, except that the provisions imposing the excise tax and creating an exemption from the sales and use tax will take effect on the first day of the 10th month beginning after publication.

# **ASSEMBLY AMENDMENT 1**

## **State Agency EV Charging Stations**

Assembly Amendment 1 (AA 1) provides that, in addition to chargers used solely for state agency owned or leased vehicles, 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.

Also, AA 1 provides that, notwithstanding the restrictions on state agency EV charging described above, 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.

## **Imposition of Excise Tax**

AA 1 modifies the definition of an “EV charging station” for purposes of the excise tax to mean a charging station for EVs containing a Level 3 charger. Therefore, under AA 1, only electricity supplied by a Level 3 charger is subject to the excise tax (as compared to electricity supplied by a Level 1, Level 2, or Level 3 charger under the bill, as introduced).

AA 1 removes the phrase “for compensation” from the excise tax provision and clarifies that the excise tax applies regardless of whether or not a person charges for the electricity delivered or placed by the person’s Level 3 charger at an EV charging station. Meanwhile, AA 1 expands a “person” to include local

governmental units, the State of Wisconsin, and all state agencies. Therefore, AA 1 provides that governmental entities are subject to the excise tax on EV charging, in addition to other persons.

AA 1 changes the requirement for a “permit” into a requirement for a “registration,” and expands it to apply whether or not the electricity is for compensation. AA 1 also provides that, at the time DOR approves a registration for an EV charging station, it must notify the electric provider serving the area in which the station is located.

## **Sales Tax Exemption**

AA 1 modifies the scope of the sales and use tax exemption to apply only to the sale of electricity delivered or placed by a Level 3 charger of an EV charging station into the battery or other energy storage device of an EV.

## **ASSEMBLY AMENDMENT 2**

### **State Agency EV Charging Stations**

Assembly Amendment 2 (AA 2) provides that, notwithstanding the restrictions on state agency EV charging described above, a state agency may own, operate, manage, or lease an EV charging station at which a Level 1 or Level 2 charger, that was 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 all such Level 1 and Level 2 chargers.

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

AA 2 modifies the scope of the provision that permits a local governmental unit to own, operate, manage, or lease an EV charging station at which a Level 1 or Level 2 charger is available to the public if all such chargers are available for public use free of charge. Specifically, AA 2 provides the requirement that all such chargers be available free of charge applies only to Level 1 or Level 2 chargers installed before the effective date of the legislation.

### **Imposition of Excise Tax**

AA 2 further modifies the definition of an “EV charging station” for purposes of the excise tax so that it includes all Level 3 chargers, regardless of the date installed, together with any Level 1 or Level 2 charger installed after the effective date of the legislation. Accordingly, under AA 2, the excise tax applies to electricity supplied by a Level 1, Level 2, or Level 3 charger—however, with respect to Level 1 or Level 2 chargers, it only applies if they were installed on or after the effective date of the legislation.

### **Sales Tax Exemption**

AA 2 modifies the scope of the sales and use tax exemption to include the sales price from the sale of electricity delivered or placed by a Level 1 or Level 2 charger into the battery or other energy storage device of an EV, but only if such Level 1 or Level 2 chargers were installed on or after the effective date of the legislation.

### **Reasonable Fee for EV Charging**

AA 2 directs the PSC to require a person to charge a reasonable fee for the electricity delivered or placed by a Level 1, Level 2, or Level 3 charger at the person’s EV charging station. However, AA 2 provides that, with respect to Level 1 or Level 2 chargers, the reasonable fee requirement shall only apply if the chargers were installed on or after the effective date of the legislation. Also, AA 2 provides that the

reasonable fee requirement shall apply to EV charging by local governmental units, the state, and all state agencies, but it shall not apply to an EV charging station located at a residence.

## **BILL HISTORY**

Representative VanderMeer offered AA 1 on January 9, 2024. On the following day, the Assembly Committee on Energy and Utilities recommended adoption of AA 1 on a vote of Ayes, 14; Noes, 1. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 15; Noes, 0.

Representative VanderMeer offered AA 2 on January 11, 2024. On the same day, the JCF recommended adoption of AA 1 and AA 2, and passage of the bill, as amended, on votes of Ayes, 13; Noes, 0.

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

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