

HOUSE BILL REPORT

HB 1793

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to electric vehicle charging stations in common interest communities.

Brief Description: Concerning electric vehicle charging stations in common interest communities.

Sponsors: Representatives Hackney, Fitzgibbon, Berry, Bateman, Macri, Ramel, Senn, Wylie, Bergquist, Valdez, Pollet and Kloba.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/18/22, 1/28/22 [DPS].

Brief Summary of Substitute Bill

- Prohibits an association of unit owners in a common interest community from prohibiting or unreasonably restricting the installation or use of an electric vehicle charging station (EVCS) within the boundaries of an owner's unit or in a designated parking space.
- Authorizes an association to impose reasonable restrictions on the EVCS, including requiring an application for approval prior to installation.
- Requires an association to approve an application to install an EVCS if the unit owner meets specified requirements.
- Provides that a unit owner is responsible for all the costs associated with the EVCS, including the costs of electricity.
- Provides a cause of action against an association for willful violations and sets forth penalties.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Hansen, Chair; Simmons, Vice Chair; Gilday, Assistant Ranking Minority Member; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 3 members: Representatives Abbarno, Klippert and Ybarra.

Staff: Yelena Baker (786-7301).

Background:

A common interest community (CIC) is a form of real estate in which each unit owner or homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common area property. In Washington, several statutes govern residential CICs, such as condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities, sometimes referred to as homeowners' associations.

The Washington Uniform Common Interest Ownership Act (WUCIOA) took effect July 1, 2018, and is applicable to CICs created after that date. A CIC created prior to the effective date of the WUCIOA may choose to opt-in to the WUCIOA, which contains comprehensive provisions addressing the management of property under its jurisdiction.

Otherwise, CICs created before July 1, 2018, remain subject to the following acts, which generally leave much of the working of a CIC to the governing documents:

- the Horizontal Property Regimes Act, which applies to residential condominiums created on or before July 1, 1990;
- the Washington Condominium Act, which applies to condominiums created after July 1, 1990; and
- the Homeowners' Association Act, which provides a framework for the formation and legal administration of homeowners' associations.

A CIC is administered by an association of unit owners or a homeowners' association—an organization consisting of property owners and homeowners within the CIC. An association of unit owners derives its authority from several documents, including the declaration of covenants, conditions, and restrictions, the association's bylaws and articles of incorporation, and the deeds to the property within a development.

The primary functions of a unit owners' association include: managing and maintaining common areas, such as parks, roads, and community centers, for the benefit of the community; imposing and collecting assessments on unit owners; and enforcing restrictive covenants that govern the community. In addition, a unit owners' association may adopt

rules and regulations concerning property use in the community and impose fines for violations of those rules.

Summary of Substitute Bill:

Provisions governing the installation and use of electric vehicle charging stations (EVCS) in common interest communities are added to the Washington Uniform Common Interest Ownership Act, the Homeowners' Association Act, the Washington Condominium Act, and the Horizontal Property Regimes Act, and apply to associations of unit owners or homeowners in common interest communities subject to these statutes.

An association of unit owners in a common interest community may not adopt or enforce a restriction, covenant, condition, bylaw, rule, regulation, or a provision of a governing document that effectively prohibits or otherwise restricts the installation or use of an EVCS within the boundaries of a unit or in a designated parking space.

An association may impose reasonable restrictions on EVCS installations. "Reasonable restriction" means a restriction that does not significantly increase the cost of an EVCS or significantly decrease its efficiency or specified performance.

An association may also require a unit owner to submit an application for approval prior to the installation of an EVCS. If approval for the installation or use of an EVCS is required, the application for approval must be processed and approved in the same manner as an application for approval of an architectural modification. An association may charge a reasonable fee for processing the application, but only if such a fee exists for all applications for approval of architectural modifications.

The approval or denial of an application must be in writing and must not be willfully avoided or delayed. If not denied in writing within 60 days from the date of receipt of the application, the application is deemed approved, unless the delay is the result of a reasonable request for additional information.

An association must approve the installation of an EVCS if the installation is reasonably possible and the unit owner agrees in writing to:

- comply with reasonable architectural standards;
- engage an electrical contractor to assess the existing infrastructure, identify additional infrastructure needs, and install the EVCS;
- obtain any permit or approval for an EVCS as required by the local government in which the common interest community is located and comply with all relevant building codes and safety standards;
- register the EVCS with the association within 30 days after installation; and
- pay for the electricity usage associated with the separately metered EVCS.

Additionally, an apartment owner in a community subject to the Horizontal Property Regimes Act or a unit owner subject to the Washington Condominium Act must provide to the association a certificate of insurance that meets specified requirements within 14 days of the approval of the EVCS installation. The insurance requirement also applies to unit owners in communities subject to the Washington Uniform Common Interest Ownership Act if the community is of the type other than an association of single-family homes, site condominiums, or planned use developments where the units are not immediately adjacent.

Unless otherwise agreed to in a written contract with the association, a unit owner is responsible for the costs of installing an EVCS. An association may not assess or charge a unit owner a fee for the placement of an EVCS.

The EVCS equipment that is installed at the unit owner's expense and is removable without damage to the property owned by others may be removed at the unit owner's expense. Removable EVCS equipment is not considered real property in any form, including fixture law.

Upon sale of the unit, the unit owner may either remove the EVCS or sell it to the buyer of the unit or to the association for an agreed price. The unit owner must disclose to any prospective buyers of the unit the existence of the EVCS and the related responsibilities of the unit owner. Neither the buyer nor the association is required to purchase the EVCS.

A unit owner and each successive owner of an EVCS is responsible for all the costs related to the maintenance, repair, or replacement of the EVCS, as well as the costs for damage to any unit, common element, or limited common element resulting from the installation, use, maintenance, removal, or replacement of the EVCS.

If an association reasonably determines that the cumulative use of electricity in the community attributable to the installation and use of EVCS requires infrastructure improvements to provide the community with a sufficient supply of electricity, the association may assess the cost of the infrastructure improvements against each unit owner that has, or will, install an EVCS.

An association that willfully violates these provisions is liable to the unit owner for actual damages and a civil penalty in an amount not to exceed \$1,000. The court must award reasonable attorneys' fees and costs to any unit owner who prevails in an action to enforce compliance with these provisions.

Substitute Bill Compared to Original Bill:

The substitute bill:

- removes the requirement that an electric vehicle charging station (EVCS) must be separately metered, and instead requires a unit owner to pay for the electricity usage associated with the EVCS and the required means to facilitate payment for the

- electricity;
- removes provisions permitting an association, under certain circumstances, to authorize the installation of an EVCS in a common area or to create a new parking space to facilitate the installation of an EVCS;
 - clarifies that removable EVCS equipment is not considered real property in any form, including fixture law;
 - removes the requirement to provide a certificate of insurance for homeowners in associations subject to the Homeowners' Associations Act;
 - modifies the requirement to provide a certificate of insurance for unit owners in associations subject to the Washington Uniform Common Interest Ownership Act by specifying that the insurance requirement applies to common interest communities other than an association of single-family homes, site condominiums, or a planned use development where the units are not immediately adjacent;
 - specifies that an electrical contractor engaged by a unit owner to install an EVCS must also assess the existing infrastructure necessary to support the proposed EVCS and identify additional infrastructure needs; and
 - modifies disclosures that must be made by a unit owner to any prospective buyer of the unit regarding the removal of an EVCS by requiring a unit owner to disclose only whether the unit owner intends to remove the EVCS, and not whether the unit owner intends to remove the EVCS in order to install it at the owner's new place of residence.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) We cannot meet our goals to reduce greenhouse gas emissions without electric vehicles. Federal investments, state programs, rapidly improving technologies, and consumer preferences for clean and affordable transportation options are resulting in rapid increase in electric vehicles in Washington. With this expansion, it is imperative to ensure everyone has affordable and convenient access to electricity as a transportation fuel. Lack of access to charging at home is the most significant barrier.

About one-third of Washingtonians live in common interest communities. Many people had to battle their homeowners' associations to make common sense climate-friendly and money-saving improvements to their homes. Research shows that approximately 85 percent of fueling takes place either at a residence or at a workplace. Providing an opportunity for those in common interest communities to fuel at their residence is critical to ensuring

Washington residents capture all the benefits and the conveniences of driving electric vehicles.

This bill carefully balances the concerns of common interest communities and unit owners who want to purchase electric vehicles and install charging stations at their homes. The bill provides that these communities may impose reasonable regulations on electric vehicle charging stations (EVCS), but may neither prohibit an EVCS altogether nor willfully avoid or delay reviewing an application for the installation of an EVCS. Unit owners remain responsible for all costs associated with an EVCS, including the cost of electricity. Communities may be held accountable in court, but only for willful violations.

The bill refers to separately metered EVCS; that provision should allow for more flexibility because some associations may want to provide this as a benefit to their unit owners. Additionally, some EVCS have an internal meter that is used for billing purposes.

(Opposed) None.

(Other) The bill addresses the need for critical infrastructure while considering the concerns of community associations regarding increased costs on neighboring members of an individual's association, especially on those who may not be able to afford an increase in their dues or an electric vehicle, thus negating their personal need for the use of an EVCS. There are some concerns about the impact of the bill on common areas of an association's property, the logistics of metering of the EVCS, certain provisions about the insurance requirement, and the definition of "reasonable restrictions."

Persons Testifying: (In support) Representative David Hackney, prime sponsor; Annabel Drayton, Northwest Energy Coalition; Leah Missik, Climate Solutions; and Justin Wilson, ChargePoint, Incorporated.

(Other) Michael Brandt, Washington State Chapter of Community Association Institute.

Persons Signed In To Testify But Not Testifying: None.