

SENATE BILL REPORT

SB 5192

As Reported by Senate Committee On:
Transportation, February 11, 2021
Ways & Means, March 18, 2021

Title: An act relating to supporting access to electric vehicle supply equipment.

Brief Description: Supporting access to electric vehicle supply equipment.

Sponsors: Senators Das, Lovelett, Carlyle, Kuderer, Nguyen and Wilson, C..

Brief History:

Committee Activity: Transportation: 1/26/21, 2/11/21 [DPS-WM, w/oRec].
Ways & Means: 3/15/21, 3/18/21 [DP2S, w/oRec].

Brief Summary of Second Substitute Bill

- Creates a regulatory framework for electric vehicle supply equipment (EVSE) that is available to the public for electric vehicle charging.
- Requires EVSE providers to clearly disclose all charges, fees and costs associated with a charging session at the point of sale.
- Requires the Washington State Department of Agriculture (WSDA) to adopt rules specifying the deadlines for publicly available EVSE to accept multiple methods of payment for a charging session.
- Directs WSDA to also adopt rules regarding interoperability standards, electric vehicle fueling systems, and the sale of electricity as a vehicle fuel applicable to publicly available EVSE.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5192 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Hobbs, Chair; Saldaña, Vice Chair; Cleveland, Das, Lovelett, Nguyen, Nobles, Randall, Sheldon, Wilson, C. and Wilson, J.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Hawkins and Padden.

Staff: Kimberly Johnson (786-7472)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5192 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Honeyford, Assistant Ranking Member, Capital; Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Pedersen, Rivers, Van De Wege and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Braun, Muzzall, Wagoner and Warnick.

Staff: Jed Herman (786-7346)

Background: There are currently over 63,000 electric vehicles (EVs) registered in Washington, 46,000 of which are battery electric vehicles powered solely by electric energy stored in batteries which must be re-charged by an external source.

Charging Stations. The most common electric vehicle charging stations for the traveling public are Level 2 and DC fast chargers. Level 2 charging generally uses 240 volt power and can typically provide 10 to 20 miles of range per hour of charge. DC fast charging provides compatible vehicles with an 80 percent charge in 30 to 60 minutes by converting high voltage AC power to DC power for direct storage in EV batteries. According to the U.S. Department of Energy's Alternative Fuels Data Center there are currently 1205 electric vehicle charging stations and 3589 charging ports in Washington, approximately 175 of which are DC fast chargers—614 ports. Ninety-three stations—259 ports—are reported as private.

Charging Station Sign and Markings. Under a state law adopted in 2013, an EV charging station must be identified using vertical signs indicating the station is only for EV charging. The sign must conform to the Manual on Uniform Traffic Control Devices (MUTCD), published by the Federal Highway Safety Administration. The MUTCD provides guidance on a variety of traffic control devices to state and local traffic engineers and contains a standard sign for use by governments to indicate the location of an EV

charging station. The EV charging station must also be identified by green pavement markings. Supplementary signs are permitted. It is currently a parking infraction, with a monetary penalty of \$124, for any person to park a vehicle in an EV charging station provided on public or private property if the vehicle is not connected to the charging equipment.

Weights and Measure Regulation. The Washington State Department of Agriculture (WSDA) Weights and Measures Program protects consumer rights and confidence in the marketplace by ensuring the accuracy in commercial transactions through testing and inspecting commercial devices, price verification, package inspection, public education, monitoring fuel quality, and investigating complaints.

Summary of Bill (Second Substitute): Definition of Publicly Available Electric Vehicle Supply Equipment. Publicly available EV supply equipment (EVSE) is defined as the EVSE and associated parking space or spaces designated by a property owner to be available to the public. EVSE that meet any of the following criteria are also considered publicly available:

- EVSE designated by the property owner to be available only to customers or visitors of a business or of a charging network;
- EVSE that can be accessed by any member of the public located in a parking garage or gated facility regardless of whether a fee is charged to enter the garage or facility; or
- EVSE made available to the public during limited time periods, are considered publicly available only during those time periods.

WSDA may adopt criteria by rule that would make additional types of EVSE publicly available to benefit the public and provide protections to consumers. Specific exemptions for certain publicly available EVSE are provided.

Sign Requirements for Publicly Available Electric Vehicle Supply Equipment. By January 1, 2023, EVSE providers must ensure all publicly available EVSE are clearly marked and disclose all charges, fees, and costs for a charging session at the point of sale, prior to initiating a charging session. At a minimum the disclosure must include information related to:

- a fee for use of the parking space;
- a nonmember plug-in fee from the EVSE;
- price to refuel in U.S. dollars per kilowatt hour or megajoule;
- any changes in price to refuel due to variable pricing;
- any other fees charged for a charging session; and
- disclosure if the charging session, or portion of the session, is offered at no cost.

However, EVSE and associated parking spaces provided by a vehicle dealer licensed under chapter 46.70 RCW at its established place of business are exempt from the sign requirements.

Methods of Payment. By July 1, 2022, WSDA, with the Utilities and Transportation Commission (UTC) and Department of Commerce (Commerce), must adopt rules requiring all EVSE providers to make multiple payment methods available at all public Level 2 and DC fast chargers. At a minimum the rules must provide:

- deadlines for compliance for Level 2 and DC installed before a specific date;
- deadlines for compliance for Level 2 and DC installed after a specific date; and
- minimum required payment methods that are convenient and reasonably support access for all current and future users.

An EV service provider may not require a subscription, membership, or account to initiate a charging session for publicly available EVSE.

However, EVSE and associated parking spaces provided by a vehicle dealer licensed under chapter 46.70 RCW at its established place of business are exempt from the methods of payment requirements.

Interoperability Standards. By July 1, 2022, WSDA, in consultation with Commerce and UTC, must adopt rules establishing requirements for all EVSE to, at a minimum, meet and maintain nonproprietary interoperability standards for Level 2 and DC fast charger EVSE. The requirements may not provide the purchase or license of proprietary technology or software from any other company and may not require companies to maintain interoperability agreements with other companies. Interoperability means the ability of hardware, systems, software, or a communications network provided by one service provider to interact with and exchange information, including payment information, between hardware, software, or communication network provided by a different service provider. Interoperability does not apply to publicly available electric vehicle supply equipment provided by a manufacturer of electric vehicles for the exclusive use by vehicles it manufactures.

However, EVSE and associated parking spaces provided by a vehicle dealer licensed under chapter 46.70 RCW at its established place of business are exempt from the sign requirements.

Reporting Requirements. By January 1, 2023, publicly available EVSE providers must report inventory and payment method information to the National Renewable Energy Laboratory Alternative Fuels Data Center. The information must be reported annually and must include at a minimum:

- EVSE service provider information;
- EVSE inventory for active and retired, decommissioned, or removed EVSE in Washington; and
- annual reports detailing EVSE payment information.

Registration Fees. Fees are established at \$20 for Level 2 electric vehicle supply equipment

ports and \$40 for direct current fast charger electric vehicle supply equipment ports. WSDA may adopt a reasonable registration fee for EVSE by rule to cover the remaining costs associated with enforcing EVSE accessibility rules.

Rules for Sale of Electricity as a Vehicle Fuel. Rules adopted by WSDA related to the sale of electricity sold as a vehicle fuel and EV fueling systems may be modified to be consistent with state objectives and may be reviewed and if necessary updated. The rules may not take effect prior to January 1, 2024. EVSE installed and in service prior to January 1, 2024, is provided a grace period from compliance with metering rules until January 1, 2034.

Enforcement and Civil Penalties. When WSDA or a city sealer tests or inspects a weighing or measuring instrument or device and finds it to be incorrect to the economic benefit of the owner/operator of the weighing or measuring instrument and an economic detriment to the customer, the owner of the device is subject to a civil penalty. For EVSE, the civil penalty is \$200 dollars for the first violation, and \$500 dollars for the second or subsequent violation occurring within one year of the first violation.

A new civil penalty is created for a failure to meet the EVSE price notifications, method of payment, and interoperability requirements. The penalty is \$200 for the first violation and \$500 for a second and subsequent violation within one year of the first. Any penalty moneys in excess of those required to support enforcement must be deposited into the electric vehicle account.

Data Collection Disclosure. If an EVSE provider sells or intends to sell consumer data collected during a charging session, the EVSE provider must disclose all types of data collected to the consumer. This requirement takes effect only if SSB 5062 (management, oversight and use of data) is not enacted by June 30, 2021.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Removes the requirement that all costs must be displayed at the charging stations or kiosk and instead requires all costs to be displayed at point of sale and prior to a user or a vehicle initiating a charging session.
- Defines point of sale.
- Changes the rulemaking review to be discretionary.
- Exempts publicly available EVSE provided by a manufacturer of electric vehicles for the exclusive use by vehicles it manufactures from the interoperability.
- Clarifies certain reporting requirements.
- Identifies fees that would apply to the inspection costs of the weights and measures program at WSDA.
- Exempts all equipment installed before 2024 from the weights and measures requirements until 2034.
- Removes the language setting up a cyclical two-year review process for weights and

measure regulations.

- Makes EVSE and associated parking spaces provided by a vehicle dealer exempt from the requirement to clearly post fees and costs for charging, accepting multiple methods of payment and the interoperability requirements of the bill.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (First Substitute):

- Modifies the definition of publicly available EVSE to include equipment that has been designated as available only to customers or visitors of a charging network.
- Provides that the data collection/sale disclosure requirement only takes effect if SB 5062 is not enacted by June 30, 2021.
- Clarifies that interoperability standards adopted by rule must be non-proprietary and prohibits the rules from requiring a charging provider to purchase or license proprietary technology or software from other companies or maintain interoperability agreements with other companies.
- Removes the rule making for reporting requirements and redirects reporting to the National Renewable Energy Laboratory Alternative Fuels Data Center and delays when reporting must begin by one year, to 2023.
- Authorizes WSDA to consider differential fees for EVSE providers that operate less than 25 publicly available EVSE in Washington and provides that the fees can be set at a rate to cover all or a portion of the cost of enforcement.
- Removes the specific references to the National Institute Standards and Technology Handbook and requires that rules that are adopted regarding the sale of electricity sold as a vehicle fuel and for EVSE fueling systems may be modified by WSDA to achieve state objectives and must be reviewed and if necessary amended every two years to maintain consistency with evolving technology. Provides the rules may take effect no earlier than January 1, 2024, and provides a ten year grace period for EVSE installed and placed into service prior to January 1, 2024, from having to comply with metering rules.
- Creates a civil penalty for a failure to meet the signage, method of payment and interoperability requirements. Sets the penalties at \$200 for the first violation and \$500 for a second and subsequent violation within one year of the first. Any penalty monies that are in excess of those required to support enforcement must be deposited into the electric vehicle account.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Transportation): *The committee recommended a different version of the bill than what was heard.* PRO: Washingtonians are increasingly purchasing electric vehicles, which is a trend we hope to see continue. The issue now is not everyone has access to affordable charging for their vehicles. This bill creates standards that will create a reliable charging experience and protect consumers. There are so many different apps for different providers and also many fees that are often undisclosed. Standardization will help very much.

Auto dealers offer electric vehicles from over 14 manufacturers. We have installed well over 100 charging stations at our dealerships. The type of charger we install is dictated by the manufacturer, there is no common standard. We only provide the electric charging opportunities as part of the sale and service of electric vehicle purchase, it is not a revenue generating endeavor for us. We would appreciate an exemption for stations that are installed at a dealership to address the unique nature that auto dealers face.

This bill will provide for more reliable and equitable payment methods for all electric vehicle owners. When you go out to a gas station, you know exactly how much you will be charged and how you can pay for the fuel. This is how it should be for electric vehicle refueling too. Also, some people may not have the ability to have a credit card and are therefore cut out of the ability to re-fuel an EV.

The regulatory certainty provided in this bill will dispel range anxiety. The expansion of electric vehicle and charging stations will help support family wage jobs. To do our part in emission reduction goals, we need a public charging system that is easily accessible and does not need a membership.

CON: We need a few points of flexibility added. We have stations that are already deployed and need something that will work for these stations. Section 5 and 6 gives too much authority to WSDA to mandate specific technology options. It needs to be outcome focused.

OTHER: Avista as part of a pilot project has installed over 450 charging stations in the north west has filed an electrification for transportation plan with the UTC and if approved Avista will likely construct 300 additional charging stations in the coming years. The business case for EV charging is uncertain right now. Adding costs to these efforts at this point in time may prove to be too much.

The long term goal of WSDA is to provide enforcement of the regulations on a fee based cost recovery basis, but there will be a need for some up front program development funds to support the staffing necessary to implement the bill. We are well suited to support the development of the weights and measure standards required under this bill.

We urge the committee to allow existing equipment to operate without substantial and costly changes.

We especially have concerns that the standards adopted in Washington not lead to a patchwork of different standards across the country. The timing set in the bill for the adoptions of certain standards may end up forcing WSDA to adopt standards before national standards which is problematic.

Persons Testifying (Transportation): PRO: Senator Mona Das, Prime Sponsor; Matt Simerson, citizen; Annabel Drayton, NW Energy Coalition; Miles Muller, Natural Resources Defense Council; Scott Hazlegrove, Washington State Auto Dealers Association; Matthew Hepner, IBEW/ceww; Karen Messmer, Thurston Climate Action Team.

CON: Justin Wilson, ChargePoint.

OTHER: John Rothlin, Avista; Kelly McLain, Washington State Department of Agriculture; Andrew Dick, Electrify America; Jeff Gombosky, Tesla; Erick Karlen, Greenlots.

Persons Signed In To Testify But Not Testifying (Transportation): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The current situation for the public in finding electric charging stations means sometimes having to join a club, carry numerous key fobs, or experiencing unknown costs for a charging session. This bill is intended to minimize compliance costs and ensure access to electric fuels. This bill would ensure more reliable and equitable access. The bill goes a long way toward standardizing electrical charging and reducing range anxiety.

OTHER: We will support this bill based on our agreement with the sponsor about proposed changes, especially in sections 4 and 6, as those balance our concerns. We are concerned with how extensive the requirements are in this bill as compared to the number of electric vehicles there are currently. Our company has installed hundreds of charging stations and are planning to install more, however, the business case is still uncertain as the costs of this bill may exceed the benefits. The bill needs to allow for flexibility as new technology becomes available, we are concerned the results of rule-making will not allow for the needed flexibility. Car dealerships should be exempt from the regulations of the bill.

Persons Testifying (Ways & Means): PRO: Annabel Drayton, NW Energy Coalition; Miles Muller, Natural Resources Defense Council; Matthew Hepner, IBEW/CEWW.

OTHER: Jeff Gombosky, Tesla; Noelani Derrickson, Tesla; John Rothlin, Avista; Justin Wilson, ChargePoint; Scott Hazlegrove, Washington State Auto Dealers Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.