

Legislative Analysis



ELECTRIC VEHICLE CHARGING SERVICES

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<http://www.house.mi.gov/hfa>

House Bill 4801 (H-3) as reported from committee
Sponsor: Rep. Andrea K. Schroeder

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4802 (H-3) as reported from committee
Sponsor: Rep. Padma Kuppa

Committee: Energy
Revised 10-16-21

BRIEF SUMMARY: House Bill 4801 would create a new act to require the Michigan Department of Agriculture and Rural Development (MDARD) to establish a registration procedure for persons providing electric vehicle (EV) charging services, allow registrants to charge for providing EV charging services, and provide exemptions from the registration requirements. House Bill 4802 would make complementary amendments to the act regulating public utilities.

FISCAL IMPACT: House Bill 4801 would have fiscal implications for MDARD. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Interest in and demand for electric vehicles continue to grow both nationally and in Michigan, with national sales increasing annually and now at an all-time high. Both foreign and domestic automakers are responding by announcing new models that include SUVs and all electric pickup trucks. However, a leading concern of current and would-be owners of electric vehicles, whether a fully electric vehicle or a plug-in hybrid that uses a combination of electricity and gasoline, is the ability to recharge the battery or fuel cell when on a longer trip.

Currently, Michigan's two largest utilities, Consumers Energy and DTE Energy, are conducting pilot programs regarding charging station infrastructure to increase the availability of residential and public EV charging stations, including charging stations along major freeways. In addition, in the Michigan Public Service Commission (MPSC) order authorizing the DTE Energy pilot program, the commission also allowed for the resale of electricity by charging station operators without requiring the entities to be regulated as utilities.¹ Some say that placing such language in statute, and creating a framework to regulate EV charging stations, could promote investment in charging station infrastructure that could greatly improve access by electric vehicle owners and, in turn, help grow the market for electric and hybrid vehicles. Legislation to address the concern has been offered.

THE CONTENT OF THE BILLS:

House Bill 4801 would create the Electric Vehicle Charging Services Registration Act to require MDARD to allow a person that provides *electric vehicle charging services* to charge for providing those services and also require MDARD to issue orders establishing a registration procedure, with some exceptions, for persons that provide EV charging services.

¹ <https://adms.apps.lara.state.mi.us/Mpsc/ViewCommissionOrderDocument/25080>

Electric vehicle charging services would mean the transfer of electric energy from electric vehicle service equipment to a battery or other storage device in an ***electric vehicle*** and the provision of billing services, networking, and operation and maintenance related to that transfer of electric energy to an electric vehicle.

Electric vehicle would mean a motor vehicle powered solely by a battery cell energy system.

Registration and fee

Any person offering EV charging services in Michigan would have to register with MDARD within 30 days after first beginning to offer such services. A person providing EV charging services before the bill's effective date would have to register within 90 days after MDARD establishes the registration process. MDARD would have to record the site of the EV charging services on the Alternative Fuels Data Center.²

As part of the registration, MDARD would have to require the registrant do all of the following:

- Provide the name of the company providing EV charging services.
- Provide the location of each of that person's ***electric vehicle charging devices*** in the state and the number of the EV charging devices.
- Provide the name, email address, phone number, and mailing address of a designated contact individual.
- Provide the EV charging device model information. This would include the name of the manufacturer, EV supply equipment type, and additional information regarding the charging device as determined by MDARD.

Electric vehicle charging device would mean an electric component assembly or cluster of component assemblies designed specifically to charge batteries within an ***electric vehicle*** by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle.

A registrant would have to update the registration by notifying MDARD, in a manner determined by MDARD, within 30 days after any of the information required above has changed.

MDARD could charge a one-time fee of up to \$75 for each charging device. Any fees collected would have to be deposited into the Electric Vehicle Services Fund created under the act.

Requirements of EV charging services providers

Providers of EV charging services would be required to do all of the following:

- Maintain records MDARD considers necessary. This would include at least the number of hours each EV charging device is fully operational and capable of charging an electric vehicle and, if it is not, the reasons why the device is not functioning.
- Remain accessible to MDARD, consumers, and electric utilities in the state during normal hours of operation.
- Clearly display the cost to a consumer at the EV charging device. This requirement would not prohibit a person providing EV charging services from displaying other information to the customer or prohibit means used to display the cost information, such as within the vehicle or on a mobile app.

² <https://afdc.energy.gov/>

Exceptions

The registration requirements and fee would not apply to any of the following:

- An electric utility, municipally owned electric utility, or cooperative electric utility.
- An independent transmission owner.
- A private owner or nonretail provider of an EV charging device that is not publicly accessible.

Electric Vehicle Services Fund

The bill would create the Electric Vehicle Services Fund in the state treasury. The state treasurer could receive money or other assets for deposit into the fund and would have to direct the investment of the fund and credit to the fund interest and earnings from those investments. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund. MDARD would have to expend money from the fund, upon appropriation, to implement the act.

Hotline and rule promulgation

The bill would require MDARD to use the Motor Fuels Quality Hotline, or a similar hotline, and an online consumer complaint form to allow consumers to report issues with EV charging devices.

MDARD could promulgate rules under the Administrative Procedures Act necessary to implement and enforce the new act.

House Bill 4802 would amend 1939 PA 3, which provides for the regulation of public and private utilities and is the enabling act for the Michigan Public Service Commission, to prohibit, with specific exceptions, a person from providing EV charging services unless the person registers with MDARD under the Electric Vehicle Charging Services Registration Act proposed by HB 4801. The requirement to register under the Electric Vehicle Charging Services Act would not apply to the following entities:

- An electric utility, municipally owned utility, or cooperative electric utility.
- An independent transmission owner.
- A private owner or nonretail provider of an EV charging device that is not publicly accessible.

The bill also would provide that a provision that restricts owning, constructing, or operating an electric distribution facility or electric meter equipment used in the distribution of electricity only to an investor-owned, cooperative, or municipally owned electric utility does not prohibit an entity that provides EV charging services from owning, constructing, or operating an EV charging device. In addition, an entity that provides EV charging services would not be considered a public utility, notwithstanding the basis on which the service is provided or billed. However, if the entity were otherwise considered a public utility under the act, or otherwise subject to regulation under the act, then that entity would continue to be subject to applicable provisions of the act. An entity that provides EV charging services would have to work with the applicable investor-owned, cooperative, or municipally owned electric utility to determine the appropriate method of distribution services for an EV charging device.

Finally, the bill would exclude a provider of EV charging services from the definition of “alternative electric supplier” for purposes of the act.

MCL 460.10g, 460.10h, and 460.10q

BACKGROUND INFORMATION:

As introduced, House Bills 4801 and 4802 were virtually identical to HBs 5445 and 4806 of the 2019-20 legislative session, as those bills were referred from the House Energy committee to the House Ways and Means committee.

FISCAL INFORMATION:

House Bill 4801 establishes MDARD as the state department responsible for the electric vehicle charging device registration program. MDARD currently has regulatory authority over sales of motor fuels in two ways, under two statutes, with both of these activities carried out by staff in MDARD's Laboratory Division:

- The department tests service station fuel pumps for accuracy in distributing the correct volume of motor fuel under the Weights and Measures Act.
- The department performs motor fuel quality testing under the Motor Fuels Quality Act.

The regulatory responsibilities given to MDARD under HB 4801 are of a different character than its service station weights and measures and motor fuel quality activities. EV charging devices are not necessarily located at motor fuel service stations.

Additional program responsibilities, and related program costs, cannot be readily estimated at this time. The department indicates that program costs would include staffing (1.0 full-time equated metrologist position), in addition to the costs of maintaining a registry of electric charging device registrants. Other costs would depend on the scope of MDARD oversight responsibilities, i.e., whether program responsibilities were active or complaint-driven.

The bill as introduced provided for a one-time registration fee per licensee of \$75. Fee revenue under the bill as introduced would have been minimal. The H-3 substitute would assess the \$75 registration fee per charging station. This change would result in substantially more fee revenue, although an estimate of potential fee revenue is not available at this time. It is not clear whether fee revenue would be sufficient to offset ongoing program costs.

The H-3 substitute also would establish a separate fund, the Electric Vehicle Services Fund, in the state treasury.

House Bill 4802 would not have a fiscal impact on the Michigan Public Service Commission in the Department of Licensing and Regulatory Affairs.

ARGUMENTS:

For:

As evidenced by consumer demand and new electric vehicle models recently introduced by American automakers, EVs are anticipated to make up an increasing number of vehicles on the road. In order to grow the market and better serve current and future EV owners, access to charging stations needs to be readily available. Currently, most charging is done at an EV owner's home or place of work. To navigate longer trips, say from Detroit to the Upper Peninsula, owners need quick, efficient, and affordable access to charging stations. Direct current fast charging (DCFC) technology, which reduces the time needed to recharge a vehicle's battery, can provide quick charging when on a road trip. However, because Michigan law currently prohibits the resale of electricity for a profit except by regulated utilities, there is little incentive for entrepreneurs to invest the capital needed to build DCFC stations.

The changes proposed by the bills are expected to incentivize investment in EV charging infrastructure. This is important, as the needs for placement of an EV charging station are different from those for a gas station. While a traditional vehicle can gas up in a matter of minutes while the owner stays with the vehicle, charging an electric battery takes more time, and owners need nearby places such as shops, restaurants, or recreational opportunities to spend time at while the vehicle is parked and charging. The range from a charge varies depending on the make and model of an EV and the operator's driving habits (including the use of heat or air conditioning). As an approximation, a Level 1 charging station (think wall outlet) delivers a driving range of about four miles per hour of charging. A Level 2 charging station (a charging station typically available at residences and some commercial properties) can deliver a range of about 12 to 60 miles per charging hour. Newer public DCFC stations, by comparison, which can charge some vehicles with as high as 800 volts, can take as little as 20 to 30 minutes to charge a vehicle to 80%.

For:

The H-3 substitute for HB 4801 reported from committee addresses most of the concerns raised by industry members regarding earlier versions of the bill. For example, the bill would restore the ability of charging station operators to use current hardware and software applications (e.g., a mobile application for a cell phone) to notify consumers of relevant cost information rather than restricting a provider of EV charging services to displaying the cost at the charging device. Industry members say this flexibility to mix and match options will enable operators to choose the available options that best serve their customers.

The reported version of the bill also would revise the definition of *electric vehicle charging services* to apply to the full range of available charging levels. An earlier version would have restricted the ability to resell electricity to only those businesses offering a minimum output of 150 kW (the most powerful of the direct current fast chargers). Reportedly, this would have left out many businesses, as most offer an output of 7 to 7.7 kW, as well as EV owners whose vehicles cannot use the higher charging level, as a charging device is limited by how fast a vehicle can uptake electricity from it.

For:

House Bill 4802 would codify a recent Michigan Public Service Commission order that allows the resale of electricity by EV charging stations without requiring the stations to have their rates regulated like utilities. House Bill 4801 would charge MDARD with creating a registration framework with a nominal one-time fee for EV charging devices. That bill would include similar consumer protections, e.g. a hotline, currently available for customers of gas stations. Further, registration would provide the ability to track the number and locations of for-profit charging stations in the state. Both bills would exempt utilities from being subject to the bill's requirements, as utilities are already heavily regulated under state and federal laws.

Against:

Some concerns of industry members may remain, such as a fee per charging device rather than per registered owner of a charging service. It has been noted that deploying charging equipment presents a significant up-front cost (e.g., up to \$50,000 for a DCFC station), with the return on investment hard to predict. Depending on the fee that is set by MDARD, which can go as high as \$75 per charging unit, the fee structure could be burdensome on small start-ups.

POSITIONS:

The following entities indicated support for the bills (6-8-21):

- ITC
- Rivian

The following entities indicated support for House Bill 4802 and concerns regarding House Bill 4801:

- Greenlots (6-17-21)
- Chargepoint (6-8-21)

The following entities indicated a neutral position on the bills:

- Michigan Environmental Council (6-8-21)
- Clean Fuels Michigan (6-17-21)

Tesla indicated a neutral position on House Bill 4081. (6-22-21)

Michigan Energy Innovation Business Council (MIEIBC) indicated opposition to the bills. (6-17-21)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.