

Date of Hearing: June 13, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 1016 (Allen) – As Amended April 17, 2018

SENATE VOTE: 38-0

SUBJECT: Common interest developments: EV-dedicated TOU meters

SUMMARY: Makes void and unenforceable any covenant, restriction or conditions contained in any deed, contract, security instrument, or other instrument in a common interest development (CID) that prohibits or restricts the installation or use of an EV-dedicated TOU meter.

Specifically, **this bill:**

- 1) Defines an "EV-dedicated TOU meter" to mean an electric meter supplied and installed by an electric utility that is separate from and in addition to any other electric meter and is devoted exclusively to the charging of electric vehicles and that tracks the time of use (TOU) when charging occurs. Includes any wiring or conduit necessary to connect the electric meter to an electric vehicle charging station.
- 2) Defines "reasonable restrictions" as restrictions based upon space, aesthetics, structure integrity, and equal access to these services for all homeowners, but an association (HOA) shall attempt to find a reasonable way to accommodate the installation request, unless the HOA would need to incur expense.
- 3) Declares that it is the policy of the state to promote, encourage, and remove obstacles to the effective installation of EV-dedicated TOU meters.
- 4) Requires EV-dedicated TOU meters to meet applicable health and safety standards and requirements imposed by state and local authorities, and all other applicable zoning, land use, or other ordinances, or land use permits.
- 5) Provides that if approval of the installation or use of an EV-dedicated TOU meter is required, the application for approval shall be processed and approved by the HOA in the same manner as an application for an architectural modification to the project and shall not be willfully avoided or delayed.
- 6) Requires the approval or denial of an application to be made in writing, and provides that if an application is not denied in writing within 60 days of receipt of the application, the application shall be deemed approved, unless the delay is the result of a reasonable request for additional information.
- 7) Provides that if the EV-dedicated TOU meter is to be placed in a common area or an exclusive use common area as designated in the CID declaration, the following provisions apply:
 - a) The owner must first obtain approval from the HOA for installation and the HOA must approve installation if the owner does both of the following:

- i. Complies with the HOA's architectural standards; and
 - ii. Engages the relevant electric utility to install the EV-dedicated TOU meter and, if applicable, a licensed contractor to install any wiring necessary to the EV charging station.
- b) The owner and every successive owner shall be responsible for all of the following:
 - i. Costs for damage to the EV-dedicated TOU meter, common area, exclusive use common area, or separate interests resulting from the installation, maintenance, repair, removal, or replacement of the EV-dedicated TOU meter;
 - ii. Costs for the maintenance, repair, replacement of the EV-dedicated TOU meter until it has been removed and for the restoration of the common area after removal; and
 - iii. Disclosing to prospective buyers the existence of any EV-dedicated TOU meter of the owner and the related responsibilities of the owner under this section.
- 8) Provides that installation of an EV-dedicated TOU meter in the common area that is for the exclusive use of an owner shall only be authorized by the HOA if installation in the owner's designated parking space is impossible or unreasonable expensive. Provides that in this case, the HOA shall enter into a license agreement with the owner for the use of the common area.
- 9) Provides that the HOA may install an EV-dedicated TOU meter in the common area for the use of all members of the HOA and, in that case, the HOA shall develop appropriate terms for the use of the EV-dedicated TOU meter.
- 10) Makes an HOA that willfully violates this section liable to the applicant or other party for actual damages, payment of a civil penalty to the applicant or other party in an amount not to exceed \$1,000.
- 11) Provides that, in any action to enforce compliance with the laws governing installation of an electric vehicle charging station in a common interest development, the prevailing plaintiff shall be awarded reasonable attorney's fees.

EXISTING LAW:

- 1) Makes void and unenforceable any covenant, restriction or conditions contained in any deed, contract, security instrument, or other instrument in a CID that prohibits or restricts the installation of an EV charging station.
- 2) Defines an "EV charging station" as the following:
 - a) Designed in compliance with the California Building Standards;
 - b) Delivers electricity from a source outside an EV into one or more EVs; and,

- c) May include several charge points simultaneously connecting several EVs to the station and any related equipment needed to facilitate charging plug-in EVs.
- 3) Defines "reasonable restrictions" as those that do not significantly increase the cost of the station or decrease its efficiency or performance.
- 4) Permits the application of reasonable restrictions on EV charging stations.
- 5) Declares that it is the policy of the state to promote, encourage, and remove obstacles to the use of EV charging stations.
- 6) Requires EV charging stations to meet applicable health and safety standards and requirements imposed by state and local permitting authorities, and all other applicable zoning, land use, or other ordinances, or land use permits.
- 7) Requires a HOA to process and approve a request to install an EV charging station in the same manner as an architectural modification to the property, and prohibits the HOA from willfully delaying or avoiding approval.
- 8) Requires the approval or denial of an EV charging station to be in writing.
- 9) Provides that if an application is not denied within 60 days from the date it is received, the application will be deemed approved, unless the delay was a result of a reasonable request for additional information.
- 10) Provides that if an EV charging station is to be placed in the common area or an exclusive use common area, the owner must obtain approval to install the charging station.
- 11) Provides that if an EV charging station is to be placed in the common area or an exclusive use common area, the homeowner must agree in writing to all the following:
 - a) Comply with the architectural standards for installation;
 - b) Engage a licensed contractor to install the station;
 - c) Within 14 days of approval, provide a certification of insurance that names the HOA as an additional insurer under the homeowner's insurance policy; and,
 - d) Pay for the electricity usage associated with the station.
- 12) Requires that any owner and each successive owner of the parking stall on which or near where the EV charging station is placed is responsible for all of the following:
 - a) Cost for any damage to the station, common areas, exclusive use common areas, or adjacent units resulting from the installation, maintenance, repair, removal, or replacement of the station;

- b) Cost for the maintenance, repair, and replacement of the charging station until it has been removed from the common area, and restoration of the common area after removal;
 - c) The cost of electricity associated with the station; and,
 - d) Disclosing to prospective buyers the existence of any charging station and the related responsibilities of the homeowner.
- 13) Requires any homeowner and each successive homeowner to maintain an umbrella liability coverage policy for \$1 million and to name the HOA as an additional insured under the policy with a right to notice of cancellation.
- 14) Provides that a homeowner liability coverage policy is not required if a homeowner uses an existing National Electrical Manufacturers Association standard alternating current power plug.
- 15) Provides that an HOA that willfully violates this section is liable for actual damages and shall pay a civil penalty to the applicant in an amount not to exceed \$1,000.
- 16) Provides that in any action to enforce compliance with this section, the prevailing plaintiff is entitled to reasonable attorney's fees.
- 17) Provides that a HOA may authorize the installation of an EV charging station in a common area for the exclusive use of an owner only if it is impossible or unreasonably expensive to install the station in the owner's designated parking space. In this case, the HOA must enter into a license agreement with the owner for the use of the space in the common area.
- 18) Provides that an HOA or the owners in an HOA may install an EV charging station in the common area for the use of all the owners. The HOA must develop the terms of use for the charging station.
- 19) Allows an HOA to create a new parking space where one did not previously exist to facilitate the installation of an EV charging station.
- 20) Provides that the affirmative vote of the owners of an HOA is not needed to install and use an EV charging station in an owner's garage or a designated parking space if the installation or use of the charging station requires access through or across the common area for the utility lines or meters, or to install and use an EV charging station through a license granted to an owner.

FISCAL EFFECT: Unknown.

COMMENTS:

There are over 52,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over six million total housing units, which represents approximately one quarter of the state's housing stock. In the 1990s, over 60% of all residential construction starts in the state were in CIDs. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments. They are characterized by a separate ownership of dwelling space

coupled with an undivided interest in a common property, restricted by covenants and conditions that limit the use of common area, and the separate ownership interests and the management of common property and enforcement of restrictions by an association. CIDs are governed by the Davis-Stirling Act (Civil Code Section 1350 et al.) as well as the governing documents of the association, including the bylaws, declaration, and operating rules. No state agency provides oversight to these communities after initial development.

The governing documents of CIDs generally require approval of the HOA for owners to make improvements or alterations to their separate interests. HOAs are required to provide a fair, reasonable, and expeditious procedure for reviewing applications for improvements or alterations. In the case of the installation of energy savings technology, the Legislature has taken proactive steps to ensure that HOAs cannot deny a homeowner's request to make changes to their separate unit. SB 209 (Corbett), Chaptered 121, Statutes of 2011, and SB 880 (Corbett), Chapter 6, Statutes of 2012, prohibited the governing documents of an association from denying or restricting the installation of an EV charging station by an owner in a CID. These bills specified conditions for the installation of an EV charging station in the common area of a CID.

This bill would create a procedure and protections for the installation of EV-dedicated TOU meters that mirrors the provisions of existing law for EV charging stations. EV-dedicated TOU meters measure when the customer used the electricity. That feature allows a public utility to bill customers with TOU meters at different rates at different times of the day and reduces the cost for consumers.

EV-dedicated TOU meter measures: Electricity prices vary by the time of the day, which reflects the varying cost of producing the electricity. During peak times in the summer, expensive and rarely used plants must be activated; however, during late evenings in the spring, renewable energy from wind plants is abundant. Varying electric rates by time of day is an economic encouragement to consumers to shift their usage. Peak rates can be as much as three or four times the off-peak rate. Because EVs will typically be garaged in the evening, and evenings and early mornings are typically times of surplus energy, TOU rates are often favorable to EV charging.

Purpose of the bill: According to the author, SB 1016 would address a gap in law by prohibiting HOAs from "unreasonably restricting" the ability of an owner to install a TOU meter and accompanying infrastructure in a common area where their EV charging station is located. The bill includes provisions similar to those required for an EV driver to install the actual charging station. These include requirements that the driver comply with HOA standards and requirements, cover the costs of the equipment, and provide necessary disclosures, among other safeguards.

Double-referred: This bill was also referred to the Committee on Judiciary where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Automobile Club of Southern California

California Electric Transportation Coalition
Chargepoint, Inc.
City Of West Hollywood
Electric Vehicle Charging Association
Environment California
Office Of Ratepayer Advocates (ORA)
Silicon Valley Leadership Group
Tesla

Opposition

None on file

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085