

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

AB 2565 (Muratsuchi) – As Amended: April 21, 2014

SUBJECT: Rental property: electronic vehicle charging stations.

SUMMARY: Makes a term in a lease, contract, security instrument, or other instrument affecting the lease of a commercial or residential property void and unenforceable if it prohibits or unreasonably restricts the installation of an electric vehicle (EV) charging station in a lessee's designated parking space. Specifically, this bill:

- 1) Makes a term in a lease, contract, security instrument, or other instrument affecting the lease of a commercial or residential property void and unenforceable if it prohibits or unreasonably restricts the installation of an electric vehicle charging station in a lessee's designated parking space including but not limited to:
 - a) An assigned parking space,
 - b) A parking space in a common area; and
 - c) A parking space that is specifically designated for use by a particular lessee.
- 2) Defines "electric vehicle charging station" or "charging station" to mean a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles.
- 3) Defines "reasonable restrictions" or "reasonable standards" as restrictions or standards that do not significantly increase the cost of the electric vehicle charging station, its installation, or significantly decrease the charging station's efficiency or performance.
- 4) Requires an EV station to meet appropriate state and local health and safety standards and requirements, and all applicable zoning, land use, or other ordinances or land use permit requirements.
- 5) Provides that if the approval of the landlord is required for installation of an EV charging station the application must be processed and approved in the same manner as an application for approval of a lessee modification to the property and must not be willfully avoided or delayed.
- 6) Requires the written approval or denial of a lessee's application to install an EV charging.
- 7) Provides that if the application is not denied within 60 days then the application is deemed approved unless the delay is the result of a reasonable request for additional information.
- 8) Provides that if the lessor approval is required and obtained by the lessee, the lessor shall approve the installation if the lessee agrees to the following in writing:

- a) Comply with the lessor's reasonable standards for the installation of the charging station;
 - b) Engage a licensed contractor to install the charging station;
 - c) Within 14 days of approval provide a certificate of insurance for \$1,000,000 that names the lessor as an additional insured; and
 - d) Pay for the electricity usage associated with the charging station.
- 9) Requires that the lessee is responsible for the following:
- a) Costs for damage to property and the charging station resulting from the installation, maintenance, repair, removal, or replacement of the charging station;
 - b) Costs for maintenance, repair, and replacement of the charging station; and
 - c) The cost of electricity associated with the charging station.
- 10) Requires the lessor to authorize installation of a charging station, for the exclusive use of the lessee, in a common area that is not an exclusive use common area, if the lessee's designated parking space is impossible or unreasonably expensive to install a charging station and the lessee satisfies all the requirements above for installing the charging station.
- 11) Requires the lessor to enter into a licensing agreement with the lessee if a charging station is installed in a common area that is not an exclusive use common area for the exclusive use of the lessee.
- 12) Allows the lessee or the lessor to install an EV charging station in the common area for the use of all the lessees of the lessor in which case the lessor must establish appropriate terms for the charging station.
- 13) Allows the lessor to create a new parking space where one did not previously exist to facilitate the installation of the EV charging station.
- 14) Provides that a lessor that willfully violates this Act is liable to the lessee applying for the EV charging station for actual damages, and must pay a civil penalty to the lessee in an amount not to exceed \$1,000.
- 15) Provides the prevailing party in an action to enforce the provisions of this Act shall be awarded reasonable attorney's fees.

EXISTING LAW:

- 1) Provides it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles to their installation. Finds that reasonable restrictions on solar energy systems are those restrictions that do not significantly increase the cost of the system or significantly decrease efficiency (Civil Code Section 714).

- 2) 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 of an EV charging station.
- 3) Defines "reasonable restrictions" as those that do not significantly increase the cost of the EV charging station or decrease its efficiency or performance.
- 4) Requires EV charging stations installed in CIDs to meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- 5) Requires a homeowners association (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 to not willfully delay or avoid approval.
- 6) Requires the approval or denial of an EV charging station in a CID to be in writing.
- 7) Provides that if an application is not denied within 60 days by a CID from the date it receives the application it will be deemed approved unless the delay was a result of a reasonable request for additional information.
- 8) Provides that if an EV charging station is to be placed in the common area of a CID or an exclusive use common area, the owner must obtain approval to install the EV charging station.
- 9) Provides that if an EV charging station is to be placed in the common area or an exclusive use common area of a CID, 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.
- 10) 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 common areas, or adjacent units resulting from the installation, maintenance, repair, removal or replacement of the station;
 - b) cost for the maintenance, removal, repair and replacement of the electric vehicle charging station until it has been removed from the common area or exclusive use common area;

- c) the cost of electricity associated with the station; and,
 - d) disclosing to prospective buyers the existence of any electric vehicle charging station and the related responsibilities of the homeowner.
- 11) Requires any homeowner and each successive homeowner to maintain an umbrella liability coverage policy for \$1 million and name the HOA as an additional insured under the policy with a right to notice of cancellation.
- 12) 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 \$1000.
(Civil Code Section 4745 et.al)

FISCAL EFFECT: None.

COMMENTS:

Background:

According to a 2012 study completed by the California Center for Sustainable Energy in coordination with the California Air Resources Board (ARB), Californians own more than 12,000 plug-in electric vehicles, roughly 35% of all plug-in vehicles in the United States. Approximately 1,000 new plug-in vehicles are being sold in the state every month.

In 2012, the Governor issued an Executive Order (EO) directing ARB, the California Energy Commission, the Public Utilities Commission, and other relevant agencies working with the Plug-in Electric Vehicle Collaboration and the Fuel Cell Partnership to develop benchmarks to help support and facilitate the rapid commercialization of zero-emission vehicles. The order directed these agencies to establish benchmarks to help the state's zero-emission vehicle infrastructure support 1.5 million electric vehicles by 2025. In furtherance of this goal, the Office of Planning and Research and the State Architect published guidelines to address physical accessibility standards and design guidelines for the installation of plug-in electric vehicle charging stations throughout California. These guidelines are voluntary and apply to public and private sites and eventually could become regulations within California Building Code Chapter 11B: Accessibility to Public Buildings, Public Accommodations, Commercial Buildings and Public Housing.

Last year, AB 1092 (Levine) (2012) Chapter 410, required the California Building Standards Commission (CBSC) to adopt mandatory standards for the installation of electric vehicle charging infrastructure for parking spaces in newly constructed multifamily dwellings and nonresidential development in the next triennial edition of the California Building Standards Code (Title 24 of the California Code of Regulations). The first drafts of these guidelines were recently released and are expected to be adopted in 2015.

SB 209 (Corbett), Chaptered 121, Statutes of 2011, prohibited the governing documents of an association from denying or restricting the installation of an EV charging station by an owner in a CID. The bill specified conditions for the installation of an EV charging station in the common area of a CID. AB 2565 is modeled after AB 209 (Corbett) but it applies to rental commercial or

residential properties. AB 209 prohibited an HOA from unreasonably restricting an owner's right to install an EV charging station. Whereas in a CID the members have a shared ownership of the common space in a commercial or residential tenant has no ownership of the common space.

Purpose of the bill: According to the author, "in order to address the lack of EV infrastructure, AB 2565 seeks to remove an impediment to EV charging station installation. Property owners may refuse to allow the installation of a charging station even if the tenant is willing to pay for the installation and operation of the station. AB 2565 would remove this impediment by stating that a property owner cannot deny a tenant the ability to install a charging station if the tenant is willing to pay for all expenses related to the installation and operation of the station."

Arguments in support: According to ChargePoint, the sponsor of the bill, EV charging infrastructure is not keeping up with electric vehicle adoption. In 2013, there were 75,000 EVs registered in California and 7,542 charging ports for a ratio of nearly 10 vehicles for every port causing congestion to charging stations. The sponsor states that individual businesses have realized the financial and environmental incentive of offering EV charging. By offering EV charging, an employer can give employees the equivalent of a 5% raise through reduced fuel and maintenance costs and time saved through HOV lane access. Further, 41% of California residents live in multi-family housing. The sponsor contends that without the ability to charge at home, Californians are unlikely to purchase electric vehicles and therefore do not get the benefits which include saving thousands on gas and maintenance costs and helping the environment.

Arguments in opposition: Opponents of AB 2565 have both broad policy as well as operational concerns with the bill. According to opponents, "AB 2565 uses the language from SB 209 (Corbett) in an attempt to give a lessee of a commercial or residential property the ability to install an EV charging station. However, SB 209 was written to assure that homeowners (property owners) would be able to install EV charging stations at their residence over any "unreasonable" objections made by the HOA. This makes sense: a homeowner should be able to make this decision for their property. But simply transferring the language to commercial and residential rental environment creates a significant change in that it reverses the roles and gives the power to the party that does not own the property." In addition, the opponents have concerns with the bill's use of the term "unreasonable" to judge as to whether or not a property owner is in compliance with its provisions. "Even though the bill's intent is to include all costs of installing and maintaining an EV charger we are not sure that a future interpretation of the unreasonable standard would actually include all costs."

Policy issues to be considered:

- 1) Installing an EV charging station could involve ripping up concrete that may be part of the travel path for other tenants and could create Americans with Disability Act (ADA) issues. This would create liability for the owner and may require coordination outside of the tenant's control. It may be more appropriate to have the owner of the property control the installation of the infrastructure to support the EV charging station.
- 2) The bill requires the lessee to comply with a lessor's reasonable restrictions and standards for installing an EV charging station. Reasonable restrictions and standards are defined as restrictions or standards that do not significantly increase the cost of the EV charging station

or installation or significantly decrease the charging station's efficacy or performance. There is going to be a lack of uniformity in application throughout the state and even within an individual jurisdiction on what is a reasonable restriction. A charging station that is functional may cost significantly less than one that is both functional and esthetically pleasing. Beyond just the need to agree to a standard, if a landlord and tenant disagree on the correct approach, and the landlord denies the tenant's request to install, then the landlord may be seen as unreasonable. If a landlord violates this standard they are subject, to a \$1,000 fine. The committee may wish to consider if this is an appropriate standard.

- 3) How will the tenant be billed for the electricity for the charging station? Will there need to be a process for master metering?
- 4) What happens to the EV charging station if the tenant moves out? Is the tenant responsible for taking the charging station out? Who pays for the maintenance of the charging station once a tenant moves out?
- 5) The committee may wish to consider if this bill will achieve the goal of encouraging the use of electric vehicles or if the demand for those vehicles is dependent more on price and availability rather than access to EV charging stations.

Committee amendments:

The committee may wish to consider the following amendments:

1. Make clear that the provisions of this bill apply only to new leases.
2. Give the lessor the option to oversee the installation of the infrastructure for an EV charging station unless they choose to give that authority to the lessee.

Double referred: The Assembly Committee on Rules referred AB 2565 to the Committees on Housing and Community Development and Judiciary. If AB 2565 passes this committee, the bill must be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

ChargePoint

Opposition

California Business Properties Association
Building Owners and Managers Association of California
California Apartment Association
California Building Industry Association
California Chamber of Commerce
California Grocers Association
California Retailers Association

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