

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2037 (Papan)
Version: June 26, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Weights and measures: electric vehicle chargers

DIGEST

This bill authorizes county sealers to test and verify as correct electrical vehicle (EV) chargers operated by a public agency that is located in the county in which the sealer has jurisdiction. If the EV charger is found to be incorrect, the bill requires the county sealer to mark it with a tag and require the charger to be repaired or corrected, as specified. The bill authorizes a county sealer to assess a civil penalty against a public agency, or contractor of the public agency, that removes or obliterates any tag or device placed, or caused to be placed, by a sealer on an electric vehicle charger operated by the public agency, except as provided.

EXECUTIVE SUMMARY

County sealers are responsible for confirming that all commercial scaling and volumetric measuring devices used in a county provide accurate readings, and are not used to facilitate fraud upon consumers. Privately owned and operated EV chargers are subject to testing and verifying by county sealers, but a 1997 Attorney General Opinion stated that a county sealer was not authorized to test city owned property because a city was not included in the definition of person under the statute. This bill seeks to have EV chargers owned and operated by a public agency be treated in the same manner for purposes of the statutes governing county sealers. The bill is sponsored by the California Agricultural Commissioners and Sealers Association and supported by several counties. The bill is opposed by several publically owned utilities. The bill passed the Senate Business, Professions and Economic Development Committee on a vote of 9 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes in each county the office of county sealer of weights and measures. (Bus. & Prof. Code § 12200.)¹
 - a) Provides the jurisdiction of a county sealer is the entire territorial limits of their county. (§ 12206.)
- 2) Requires a county sealer to test all weighing or measurement instruments and accessories used for commercial purposes within their jurisdiction. (§ 12210.)
- 3) Requires every person who deploys a weighing or measuring device for commercial purposes to first have that device sealed by a county sealer, unless they were sealed prior to sale. (§ 12501.1.)
- 4) Requires a sealer to mark an incorrect weight or measuring instrument “out-of-order” if they judge the instrument to be repairable. (Bus. & Prof. Code § 12506.)
- 5) Authorizes a sealer to levy a civil penalty against a person violating any provision related to county sealers of not more than \$1,000 for each violation.
 - a) Any civil penalty is to be cumulative to civil remedies or penalties imposed under any other law. (Bus. & Prof. Code § 12015.3.)
- 6) Requires a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty to be provided to the person charged with the violation before a civil penalty is levied.
 - a) The person charged has the right to request a hearing within 20 days after receiving notice. If a hearing is not timely requested, the sealer may take the action proposed without a hearing.
 - b) If a hearing is requested, notice of the time and place of the hearing is to be given at least 10 days before the date set for the hearing.
 - c) Requires the person to be given an opportunity to review the sealer’s evidence and to present evidence on their own behalf at the hearing. *Id.* at (a)-(b.)
- 7) Authorizes an appeal of the county sealer’s decision to the Secretary of Food and Agriculture (Secretary) and specifies the procedures required at the appeal, including, among others:
 - a) The appeal must be in writing and signed by the appellant or their authorized agent, state the grounds for the appeal, and include a copy of the sealer’s decision. The appellant is required to file a copy of the appeal with the sealer at the same time it is filed with the Secretary.

¹ All further references are to the Business and Professions Code, unless specified otherwise.

- b) The Secretary may grant oral arguments upon application made at the time written arguments are filed.
 - c) The Secretary must decide the appeal on the record of the hearing, and if the Secretary finds substantial evidence in the record to support the sealer's decision, the Secretary is to affirm the decision.
 - d) Specifies for review of the Secretary's decision pursuant to a writ of mandamus under Section 10094.5 of the Code of Civil Procedure. (*Id.* at (d).)
- 8) Defines "person" to include a person, firm, corporation, or association. (§ 12011.)

This bill:

- 1) Authorizes county sealers to test and verify as correct EV chargers operated by a public agency that is located in the county in which the sealer has jurisdiction.
 - a) A county sealer, upon testing and finding that an EV charger operated by a public agency is incorrect, must mark with a tag or other suitable device the words "out of order" and require the charger to be repaired or corrected within 30 days, subject to retesting and verification by the county sealer.
- 2) Authorizes a county sealer to assess a civil penalty, pursuant to the civil penalty provision described above, against a public agency, or a vendor or entity contracted by a public agency to provide and maintain electric vehicle charger services on behalf of the public agency, that removes or obliterates any tag or device placed, or caused to be placed, by a sealer on an electric vehicle charger operated by the public agency.
 - a) Specifies that for purposes of levying a civil penalty a person includes a public agency and any contracted vendor or entity.
- 3) Provides that if a public agency owns an electric vehicle charger and leases the electric vehicle charger commercially, the entity that operates the electric vehicle charge commercially must be the entity for compliance with these provisions.
- 4) Specifies that 1) and 2), above, does not apply to an electric vehicle charger operated by a local publicly owned electric utility if the local publicly owned utility does all of the following:
 - a) is responsible for conduction field testing to validate the compliance with specification and user requirements and measurement and transactional accuracy;
 - b) uses filed inspection and testing practices equivalent to the National Institute of Standards and Technology's Handbook 44 inspection and test procedures for electric vehicle fueling systems;
 - c) tests and conducts a field inspection for each electric vehicle charger at least once every six months;

- d) documents the results of a test and field inspection and any action taken to address a failed test or field inspection, retains that documentation, and makes it available to any person requesting it; and
 - e) conspicuously affixes a clear and legible identification notification on each electric vehicle charger, as specified.
- 5) Authorizes a county board of supervisors, by ordinance, to charge an annual registration fee for the cost of inspecting and testing an electric vehicle charger, as provided.
- 6) Defines “public agency” as any city, county, city and county, district, or other local authority or public body of, or within, this state.

COMMENTS

1. Stated need for the bill

The author writes:

County Sealers ensure a fair marketplace by testing weights, scales, and pumps so consumers can be confident that they “get what they pay for,” and allows for fair competition in the marketplace. This is the most basic and fundamental principle of the marketplace that dates back to the earliest civilizations.

AB 2037 extends these invaluable protections to those customers utilizing municipally-owned EV chargers. It is imperative that these commercial weighing and measuring devices are registered, tested and sealed in the same manner as all other devices, including gasoline pumps and private sector EV chargers.

2. This bill seeks to allow county sealers the authority to test and verify as correct electrical vehicle (EV) chargers operated by a public agency

There is a 1997 Attorney General Opinion that opined that “person” under the statutes that apply to county sealers does not include a city and, therefore, a county sealer is not authorized to test city owned devices. (60 Ops. Cal. Atty Gen 361 (1997).) The California Agricultural Commissioners and Sealers Association, the sponsors of the bill, note that “the universe of municipally-owned and operated weighing and measuring devices was uncommon” until recently and state that the fact that the county sealer statutes do not apply to cities “has become a larger issue with the proliferation of electric charging devices (EV) used for passenger vehicles that are owned and operated by municipalities.”

This bill seeks to address this by specifically allowing county sealers the authority to test and verify EV chargers owned by public agencies so public EV chargers are verified in the same manner as all other EV chargers. This bill provides that a person, for purposes of levying a civil penalty, includes a public agency and any contracted vendor or entity. All of the procedures described in the Existing Law section, above, that apply when a civil penalty is assessed by a county sealer would apply to any public agency assessed a civil penalty by a county sealer.

Recent amendments to the bill have been made to attempt to address the concerns of publically owned utilities who wish to be exempted from the bill. The bill specifies that the above provisions would not apply to a public agency if the local publicly owned utility does all of the following:

- Is responsible for conduction field testing to validate the compliance with specification and user requirements and measurement and transactional accuracy,
- Uses filed inspection and testing practices equivalent to the National Institute of Standards and Technology's Handbook 44 inspection and test procedures for electric vehicle fueling systems.
- Tests and conducts a field inspection for each electric vehicle charger at least once every six months.
- Documents the results of a test and field inspection and any action taken to address a failed test or field inspection, retains that documentation, and makes it available to any person requesting it.
- Conspicuously affixes a clear and legible identification notification on each electric vehicle charger, as specified.

The bill also provides that if a county sealer finds a locally owned public utility is not in compliance with the above, the county sealer is to notify the utility director. The locally owned public utility is to respond within 30 days of receiving the notice and explain actions taken to comply. If the local publicly owned electric utility fails to provide a response, the governing board of the local publicly owned electric utility is required to discuss the notice of noncompliance at its next publicly noticed regular meeting.

The opposition has told Committee staff that, while they appreciate the attempts of the author to address their concerns, they still remain in opposition even with the recent amendments. They believe this bill unnecessarily requires POUs to inspect their EV chargers more frequently than county sealers, which will increase inspection costs.

3. Statements in support

The County of Santa Clara writes in support stating:

County Sealers of Weights and Measures oversee the inspection and testing of weight and measurement devices to ensure fairness in the marketplace and that consumers reliably get what they paid for. A Sealers' jurisdiction generally covers devices used for commercial purposes, such as scales in grocery stores and gas pumps. With the exception of parking meters, other publicly owned devices do not fall under their purview. A County Sealer has the authority to test publicly owned parking meters and if charging inaccurately, the Sealer can require that meter to be disabled. Currently, there is no entity in charge of verifying the accuracy of publicly owned EV chargers and these chargers are becoming increasingly unreliable. Consumers may be unaware they are getting less than what they are paying for and have no option for recourse.

AB 2037 will grant County Sealers clear authority to inspect, test, register, and seal municipally owned EV chargers, and will ensure confidence, impartiality, and consumer protection, in these transactions.

4. Statements in opposition

The Northern California Power Agency and Southern California Public Power Authority write in opposition unless amended stating:

The applicability of AB 2037 is of major concern to POUs [publically owned utilities]. POUs and their skilled electric utility workers have the direct responsibility to maintain their infrastructure to provide reliable and affordable electricity to their communities. They are the most appropriate and qualified entity to inspect and manage their infrastructure – including EV chargers – to protect their customers. As public agencies governed by public officials directly accountable to their communities, POUs are also more closely connected to their customers to address their needs. It would be inappropriate to give broad authority to an outside non-electric utility employee to make unilateral decisions on whether POU infrastructure is working properly and, if not, whether it can be repaired – especially when this authority could lead to condemning POU property and issuing fines against POU employees.

We are also concerned with the duplicative costs AB 2037 would impose on POU customers. Currently, the average retail price of electricity in California is approximately double the national average. There are several market and policy factors that are placing additional pressure to increase electricity costs on ratepayers. As mentioned above, any POU costs associated with inspecting and maintaining EV chargers are already being paid by POU customers. By allowing county sealers to impose its own inspection costs on POUs, AB 2037 would add additional costs to POU customers without any commensurate benefit.

We have provided language to the bill's sponsor (attached) that would recognize the unique responsibilities of a POU in providing EV chargers within its service area. These amendments would recognize the POU's role in operating its EV chargers and avoid unnecessary costs to POU customers. For the aforementioned reasons, we must oppose AB 2037 unless these amendments are made to the bill.

SUPPORT

California Agricultural Commissioners and Sealers Association (sponsor)
County of Placer
County of Sacramento
County of Santa Clara
San Bernardino County

OPPOSITION

Burbank Water and Power
Northern California Power Agency
Southern California Public Power Authority

RELATED LEGISLATION

Pending Legislation: AB 2453 (Villapudua, 2023) prohibits, until January 1, 2028, requiring electric vehicle supply equipment (EVSE) to be retested or placed in service by a service agent or sealer if the EVSE has previously been placed in service by a service agent or sealer before the EVSE is used after receiving routine repairs, as defined. AB 2453 was currently pending in the Senate Business, Professions and Economic Development Committee at the time this analysis was released.

Prior Legislation:

AB 1304 (Papan, Ch. 575, Stats. 2023), increased the permissible fees that County Sealers can charge in order to fund their inspection and verification programs.

AB 694 (Privacy and Consumer Protection, Ch. 525, Stats. 2021), among other things, extended the authority of county boards of supervisors to charge fees to recover the costs of the County Sealer to perform specified duties until January 1, 2027.

PRIOR VOTES

Senate Business, Professions and Economic Development Committee (9 Ayes, 0 Noes)
Assembly Floor (Ayes 73, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Privacy and Consumer Protection Committee (Ayes 10, Noes 0)
