

Date of Hearing: March 12, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 2037 (Papan) – As Amended March 6, 2024

**SUBJECT:** Weights and measures: electric vehicle chargers

**SYNOPSIS**

*This bill would grant county sealers jurisdiction over publicly-operated electric vehicle (EV) chargers. Existing law requires county sealers to test all weighing and measuring devices used for commercial purposes in the counties in which they have jurisdiction. This includes privately-operated EV chargers. However, a 1977 Attorney General (AG) opinion limited the jurisdiction of county sealers by excluding publicly-owned weighing and measuring devices. This did not present an issue until recently, when cities and counties began owning and operating many commercial EV chargers.*

*County sealers protect both consumers and retailers. Consumers are protected against fraud, and save money, if they can trust the measurements they are provided when purchasing goods and paying for utilities. County sealers also protect honest businesses from dishonest ones: a business that is able to reap extra revenue by cheating its customers ever-so-slightly on many transactions is one that gains an unfair advantage over law-abiding competitors that provide their customers with accurate measurements.*

*California's EV owners are increasingly frustrated by the number of inaccurate and nonfunctional EV chargers in the state. Granting county sealers jurisdiction over these devices would help alleviate this problem, while also ensuring consistency between publicly- and privately-operated chargers.*

*The bill is sponsored by the California Agricultural Commissioners and Sealers Association, and supported by the County of Santa Clara. The measure has no opposition on file.*

**SUMMARY:** Expands the jurisdiction of county sealers to include publicly-operated EV chargers. Specifically, **this bill:**

- 1) Allows county sealers to test any commercial electric vehicle (EV) charger operated by a public agency in the county in which the sealer has jurisdiction.
  - a) "Public agency" is defined as a city, county, city and county, district, or any other local authority or public body of, or within, the state.
  - b) If an EV charger is found to be incorrect, a county sealer must notify the owner or operator of the charger. The county sealer may immediately designate the charger as "out-of-order."
  - c) Any person may park a vehicle for free in the parking space of the out-of-order charger until the charger is repaired or replaced by the owner or operator.

- d) A public agency and its agents may not remove an out-of-order tag or device, or commercially use an out-of-order charger, until it has been corrected and verified by a county sealer.
- 2) Permits a county board of supervisors to charge an annual registration fee for the cost of inspecting and testing an EV charger. The fee shall not exceed the county's total cost of inspecting and testing an electric vehicle charger.

**EXISTING LAW:**

- 1) Defines "*person*" [EMPHASIS ADDED] to include a person, firm, corporation, or association. (Bus. & Prof. Code § 12011.)
- 2) Details how a sealer may levy a civil penalty against a *person* [EMPHASIS ADDED] who violates provisions of the Weights and Measures code. (Bus. & Prof. Code § 12015.3.)
- 3) Establishes in each county the office of county sealer of weights and measures. (Bus. & Prof. Code § 12200.)
- 4) Extends the jurisdiction of a county sealer to the entire territorial limits of their county. (Bus. & Prof. Code § 12206.)
- 5) Requires a county sealer to test all weighing or measurement instruments and accessories used for commercial purposes within their jurisdiction. (Bus. & Prof. Code § 12210.)
- 6) Provides common definitions for "correct" and "incorrect." (Bus. & Prof. Code § 12500.)
- 7) Requires every *person* [EMPHASIS ADDED] 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. (Bus. & Prof. Code § 12501.1.)
- 8) 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.)
- 9) Requires owners or users of weight and measuring instruments to correct them within 30 days of being marked out-of-order. (Bus. & Prof. Code § 12507.)
- 10) States that any *person* [EMPHASIS ADDED] who removes or obliterates any tag or device placed by a county sealer is guilty of a misdemeanor. (Bus. & Prof. Code § 12508.)
- 11) Outlines various actions that, if taken by a *person* [EMPHASIS ADDED], would make that person guilty of a misdemeanor. (Bus. & Prof. Code § 12510.)
- 12) Sets limits on how much county sealers can charge for their services. (Bus & Prof. Code § 12240.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:**

1) **Background.** This bill would allow county sealers to test electrical vehicle (EV) chargers operated by public agencies. County sealers are responsible for ensuring that all commercial scaling and volumetric measuring devices used in a county provide accurate readings, and are not installed and used to facilitate fraud. Statutory authorization for the office of the county sealer is more than a century old; the oldest authorizing statute uncovered by Committee staff was enacted in 1913.

The county sealer's seal is affixed to many measuring devices encountered in the course of daily life in California. County sealers guarantee that if the readout at the gas station says that seven gallons of gasoline have been pumped, then the pump in question has actually dispensed seven gallons; that if the scale at the supermarket says a steak weighs two pounds, then the scale accurately measured two pounds; and that if a natural gas submeter in an apartment says that 2,000 cubic feet of natural gas were used last month, then 2,000 cubic feet of gas were actually provided.

EV owners in California are frustrated by the number inaccurate and nonfunctional EV chargers in the state, as described in a recent LA Times article:

Ask around and many EV owners will agree, public chargers have a bad reputation. Those operated by companies including ChargePoint, Electrify America, Blink, and EVgo don't work 20% to 30% of the time, according to studies from UC Berkeley and data firm J.D. Power.<sup>1</sup>

Just as internal combustion engine vehicles rely on gas stations to accurately dispense gas, EVs depend on EV chargers to accurately dispense electricity. County sealers verify that gas pumps are accurate, and as Californians continue to purchase EVs, those same sealers are expected to verify the accuracy of EV chargers.<sup>2</sup> However, their jurisdiction extends only to privately-operated chargers. A 1977 AG opinion restricted the jurisdiction of county sealers by excluding cities from the definition of "person" presented in Bus. & Prof. Code § 12011.<sup>3</sup> This has never been a problem for gas stations, of which the vast majority are privately-operated. However, many EV chargers are operated by public agencies.<sup>4</sup> As a result county sealers lack jurisdiction over these devices.

This bill has precedent: County sealers were granted narrow jurisdiction over government-operated weighing and measuring devices in 2000 when an exception for city-operated parking meters was written into code. This bill seeks to create a similar exception for EV chargers operated by public agencies.

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<sup>1</sup> Russ Mitchell, "Broken chargers, lax oversight: How California's troubled EV charging stations threaten emission goals," *LA Times*, January 24, 2024, <https://www.latimes.com/environment/story/2024-01-24/california-ev-charging-stations-broken>.

<sup>2</sup> Melissa Alejandro, Mickey Francis and Melissa Lynes, "California leads the United States in electric vehicles and charging locations," U.S. Energy Information Administration, December 14, 2023, available at <https://www.eia.gov/todayinenergy/detail.php?id=61082>.

<sup>3</sup> 60 Ops. Cal. Atty. Gen. 361 (1977).

<sup>4</sup> Los Angeles Department of Water & Power, "LADWP to Build and Operate EV Fast-Charging Stations in L.A.'s Underserved Communities, Offer \$4,000 Used EV Rebate to Provide Working Class Angelenos a Clean Energy Future 'Powered by Equity,'" *LADWP News*, November 16, 2023, <https://www.ladwpnews.com/ladwp-to-build-and-operate-ev-fast-charging-stations-in-l-a-s-underserved-communities-offer-4000-used-ev-rebate-to-provide-working-class-angelenos-a-clean-energy-future-powered-by/>.

2) **Author's statement.** According to the author:

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. Allowing for the most basic and fundamental principle of the marketplace to function unrestricted.

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.

3) **What this bill would do.** This bill would extend the jurisdiction of county sealers to include EV chargers operated by public agencies. The bill has six components:

1. County sealers' jurisdiction is expanded to include EV chargers operated by a public agency within a sealer's county of operation.
2. Definitions:
  - (a) Public agencies are defined to include “cities, counties, cities and counties, or any other local authority or public body of, or within, this state.”
  - (b) “Electric vehicle charger operated by a public agency” is defined as “an electric vehicle charger that is either owned by a public agency or for which the public agency has entered into an agreement to have the electric vehicle charger installed, maintained, or serviced, to have the revenues from the electric vehicle charger collected, or to otherwise have electric vehicle charging services performed, on behalf of the public agency.”
  - (c) “Correct,” “incorrect,” and “out-of-order” are defined elsewhere in code.
3. If a charger is found to be incorrect, the sealer is required to immediately notify the owner or operator and may immediately place the charger out-of-order.
4. Any person may park a vehicle for free in the charger's corresponding parking space until the charger is repaired or replaced.
5. Neither a public agency nor its agents may remove an out-of-order tag that has been placed by a county sealer, or commercially use an out-of-order charger until it has been verified correct by a sealer.
6. A county board of supervisors may charge an annual registration fee to cover the cost of inspecting and testing EV chargers, which is not to exceed the total cost incurred as a result of inspecting and testing these chargers.
7. The bill does not apply EV chargers that dispense electricity for free.

4) **Analysis.** The goal of this bill is to allow county sealers to inspect and seal publicly-operated EV chargers. As EV ownership continues to expand, Californians have become increasingly frustrated by the number of inaccurate and nonfunctional publicly-operated chargers present in

the state. Allowing county sealers to test and verify these devices could help alleviate this problem.

With respect to point #1 above, this statutory update expands the jurisdiction of a county sealer to include publicly-operated chargers: “a county sealer may test and verify as correct any electric vehicle charger operated by a public agency that is located in the county in which the sealer has jurisdiction.” This is the most significant piece of this bill.

Point #2, above, provides the definitions for the bill. Defining “public agencies” at the top of the bill allows the bill’s scope to be easily modified, should future legislatures wish to alter the list of affected government entities. However, this bill points to Bus. & Prof. Code § 12506 for the definition of “out-of-order,” but the referenced section does not actually define the term. The proposed Committee amendments will modify the current bill language as follows:

(2) “Electric vehicle charger operated by a public agency” means an electric vehicle charger that is either owned by a public agency or for which the public agency has entered into an agreement to have the electric vehicle charger installed, maintained, or serviced, to have the revenues from the electric vehicle charger collected, or to otherwise have electric vehicle charging services performed, on behalf of the public agency *for commercial use by the public*.

~~(4) “Out of order” has the same meaning as described in Section 12506.~~

~~(5)~~ (4) “Public agency” means any city, county, city and county, district, or other local authority or public body of, or within, this state.

Having had their jurisdiction expanded, point #3 details how sealers should go about testing EV chargers. This is no longer necessary, as sealers’ responsibilities within their jurisdictions are covered by existing code.

Point #4 requires out-of-order EV chargers to be made available as free parking spots until the chargers are repaired or replaced. This provision appears to have been inspired by a previous exception to the 1977 AG opinion, which allowed county sealers to test and certify the accuracy of parking meters located in a county (including those owned and operated by a city.) This provision makes less sense for EV chargers than it does for parking meters, as allowing vehicles to park in front of out-of-order chargers can interfere with efforts to repair these chargers. Furthermore, the bill does not preclude gas-powered vehicles from parking in these spots. Designating certain parking spots “EV only” as described in Veh. Code § 22511 incentivizes the adoption of EVs; allowing gas-powered vehicles to park in these spots is counterproductive to this goal. As a final remark, enforcing “free parking” may become confusing under certain circumstances. For example: if an out-of-order, publicly-operated charger exists in a paid parking lot, is that lot required to allow a vehicle to park for free? In order to address points #3 and #4, the proposed Committee amendments will modify the current bill language as follows:

~~(c) If the county sealer determines that a specific electric vehicle charger is incorrect, then the sealer shall notify the owner or operator of the electric vehicle charger, may immediately place the charger out of order, and any person may park a vehicle free of charge in the parking space to which the inaccurate charger corresponds until the owner or operator replaces or repairs the inaccurate electric vehicle charger.~~

***(c) A county sealer shall condemn and seize and may destroy an incorrect electric vehicle charger operated by a public agency, which in the best judgment of the sealer is not susceptible of repair, but any which the sealer finds susceptible of repair, they shall cause to be marked with a tag or other suitable device with the words "Out of order."***

With respect to point #5, Bus. & Prof. Code § 12508 states that “any *person* [EMPHASIS ADDED] who removes or obliterates any tag or device placed upon any weight, measure, or weighing or measuring instrument by a sealer is guilty of a misdemeanor.” Note that as written, “person” does not include public agencies due to the aforementioned 1977 AG opinion. The bill addresses this by explicitly preventing public agencies and their agents from removing out-of-order tags that have been placed by county sealers. The proposed committee amendments replace the criminal penalty with a civil penalty, as outlined below. Though Section 12015.3 occasionally uses the word “person,” it should be understood that its provisions are meant to apply to public agencies, or employees or agents of a public agency, in the context of this bill.

~~(d) A public agency, or an employee or an agent of a public agency, shall not remove an out-of-order tag or a device placed by a county sealer or commercially use an electric vehicle charger placed out of order until it is repaired, recalibrated, or returned to a correct condition, and then verified correct by a county sealer.~~

***(d) Except as provided in Section 12509, any public agency, or employee or agent of a public agency, who removes or obliterates any tag or device placed upon an electric vehicle charger by a sealer may have a civil penalty levied against them as provided in Section 12015.3.***

Point #6 allows county sealers to fund their operations by charging annual registration fees to the operators of tested EV chargers. Existing law authorizes counties to charge fees to recover the costs incurred by county sealers when they perform required inspections. This is a reasonable approach and consistent with the existing statutes related to county sealers. By appropriately and adequately funding county sealers, the Legislature can both ensure that sealers perform inspections with the frequency required under law and prevent counties from operating at a deficit in order to fund sealers’ operations. The proposed Committee amendments will modify the current bill language as follows:

(e) A county board of supervisors may, by ordinance, charge an annual registration fee for the cost of inspecting and testing an electric vehicle charger, as authorized by this section. The charge shall not exceed the county’s total cost of inspecting and testing an electric vehicle charger ***pursuant to Section 12240.***

Finally, point #7 clarifies that this bill only applies to commercial EV chargers. This is unnecessary, as Bus. & Prof. Code § 12210 already specifies that county sealers are only required to inspect weighing and measuring devices used for commercial purposes. The proposed Committee amendments will modify the current bill language as follows:

~~(f) This section does not apply to an electric vehicle charger for which no payment is required to charge an electric vehicle.~~

There is no physical difference between a charger operated by a private entity and a charger operated by a city or county, but county sealers have jurisdiction over one and not the other. This distinction is irrelevant to EV owners, who care only that their vehicle is successfully charged at

the advertised rate. Given the arguments presented, it appears reasonable for the Committee to approve expanding the jurisdiction of county sealers to include publicly-operated EV chargers.

5) **Related legislation.** AB 1304 (Papan, Chap. 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, Chap. 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.

AB 347 (Chau, Chap. 521, Stats. 2018), 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, 2022.

AB 296 (Dodd, Chap. 133, Stats. 2015) 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, 2019.

AB 1623 (Yamada, Chap. 234, Stats. 2012) 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, 2016, and established and/or revised various device fee caps.

AB 2361 (Ruskin, Chap. 260, Stats. 2010) 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, 2013.

AB 889 (Ruskin, Chap. 529, Stats. 2005) 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, 2011. The bill also established a two-tiered fee schedule that provided both a location fee and a device fee, in order to more effectively capture the cost of the initial device inspection.

AB 1481 (Granuland, Chap. 511, Stats. 2000) allowed County Sealers to test and certify the accuracy of all parking meters located in a county, including those owned and operated by a city, county, or a city and county.

**ARGUMENTS IN SUPPORT:** The County of Santa Clara writes in support:

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.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Agricultural Commissioners & Sealers Association (sponsor)  
County of Santa Clara

**Opposition**

None on file with this committee

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