To: New Jersey Law Revision Commission
From: Michael Fuccile and Randall Terhune, Legislative Law Clerks
Re: Development and Installation of Electric Vehicle Supply Equipment or Make-Ready Parking Spaces Pursuant to N.J.S. 40:55D-66.19 - 66.20
Date: June 10, 2024

MEMORANDUM

Project Summary

On July 09, 2021, Governor Phil Murphy signed into law an “Act concerning electric vehicle supply equipment and Make-Ready parking spaces . . .”2 The Act sets forth “land use solution[s] to promote and require the expansion of electric . . . charging station infrastructure” throughout the State of New Jersey.3

At the request of a member of the public, Commission staff engaged in a preliminary review of this area of the law and presented an initial Memorandum to the Commission in May of 2023, seeking authorization to engage in additional research and outreach in the area to assess whether the Act might benefit from clarification.4

The basis for that request was the fact that a preliminary review of the Act raised several questions that are unanswered by the current statutory scheme. Regardless of the type of application, the Act does not specify what happens when the requirements of the Act are not met;5 whether the construction official is a part of the review process prior to the issuance of a zoning permit;6 what happens when the requirements for the issuance of a zoning permit are not satisfied;7 and, whether a municipality may require an applicant to install a specific type of electric vehicle supply equipment.

The statutes on which the Commission initially focused were N.J.S. 40:55D-66.19 (Application for development for the installation of electric vehicle supply equipment or Make-Ready parking spaces at existing gas stations, retail establishments, or other existing buildings; requirements) and N.J.S. 55D-66.20 (Make-Ready parking spaces and installation of electric vehicle supply equipment; site plan approval; multiple dwellings; requirements).

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1 Preliminary work in this area was done by Samuel M. Silver, during his time as the Deputy Director of the Commission.
2 P.L. 2021, c.171, eff. Jul. 09, 2021
4 Samuel M. Silver, Deputy Director, conference with Peter A. Vignuolo, Esq., Partner, Clarkin & Vignuolo, PC, (Mar. 16, 2023).
5 Id. at 26
6 Id.
7 Id.
At the time of the Commission’s initial consideration of this area, there were no bills pending that concerned N.J.S. 40:55D-66.19 and one bill pending that sought to amend N.J.S. 40:55D-66.20 but did not address the potential issues raised in the initial Memorandum.

When the Commission considered this issue in May 2023, the Commission authorized further research and outreach, and also raised questions about: how other jurisdictions have addressed the issue of what type of electric charging equipment is required, the impact of developments at the federal level and internationally, and whether the current rate structure has an impact on the installation of EVSE or “Make Ready” parking spaces.8

Since that time, there have been significant developments in this area, some of which are summarized below.

Preliminary 50 State Overview

All states have current statutes or pending legislation regarding electric vehicles. At least fourteen states — California, Colorado, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Virginia, Vermont, and Washington — have adopted low-emission vehicle and zero-emission vehicle standards.9 California is a leading state for such initiatives, and the California Legislature has introduced over 700 bills mentioning electric vehicles in its 2023-2024 session.10 Included among the California bills are some pertaining to parking and charging stations for electric vehicles.

More than 30 states – Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawai’i, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, North Dakota, Nebraska, Nevada, New Hampshire, New York, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington, Wisconsin, and the District of Columbia – have statutory provisions focusing on aspects of electric vehicle charging stations (the statutes in states such as Iowa, Kansas, Mississippi, Missouri, New Mexico, North Carolina, Ohio, South Carolina, South Dakota, Texas, and Wyoming in this area appear to be more limited in scope and focus on things such as taxation, utilities, and fees).11

States have been developing electric vehicle legislation to varying degrees. Colorado enacted a bill concerning the implementation of its climate goals with direct reference to electric vehicles on May 17, 2024.12 Specifically, Colorado established an Office of Sustainability to

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10 CALIFORNIA LEGISLATIVE INFORMATION, Bill Search, https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml?session_year=20232024&keyword=electric%20vehicle&house=Both&author=All&lawCode=All (last visited June 6, 2024).
11 A Westlaw search of the “All states” database for “electric vehicle /s park! or charg!” returned 893 results. (Thomson Reuters Westlaw Edge, last visited June 7, 2024)
“coordinat[e] and assist[en] in planning and constructing state agencies’ electric vehicle charging infrastructure and ensur[e] utilization of such infrastructure.”13 In Maryland, it seems that work is being done on the local level, by way of municipal ordinances. On January 29, 2024, for example, Prince George’s County in Maryland enacted an ordinance that specifies the scope of electric vehicle infrastructure, explicitly including two- and three-family housing (which were of interest when this project was first brought to the attention of the Commission).14

Given the significant number of enactments and bills pending in numerous state legislatures – and the fact that states seem to be pursuing different approaches to addressing issues pertaining to electric vehicles – it is unclear which approach may provide the most clear and useful guidance. New Jersey is, however, among the states with legislatures that are actively working in this area.15

**Recent Developments**

**International**

A brief preliminary survey of international developments in this area suggests that there has been considerable activity.

The European Union Alternative Fuels Infrastructure Regulation took effect beginning in April 2024. The objectives of the AFIR include ensuring: sufficient infrastructure to support alternative fuel vehicles in EU member states; infrastructure interoperability; and comprehensive user information plus sufficient payment options.16

Australia’s regulatory initiatives regarding EV charging stations were effective January 1, 2024, and involve a collaboration between Australian states and territories for government-supported EV charging infrastructure.17

Public Charge Point Regulations were introduced in the United Kingdom in July 2023 that mandate requirements pertaining to EV charge points.18

**Federal**

13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 *Id.*
18 *Id.*
Two major federal statutes were recently enacted that pertain to electric vehicle charging stations: The Infrastructure Investment and Jobs Act\(^\text{19}\) and the Inflation Reduction Act.\(^\text{20}\) Both allocated funds and took initial steps to encourage the creation of electric vehicle charging infrastructure. Since these acts are relatively new, and are still being considered, debated, and implemented at the federal and state levels, there may be additional changes in the coming years.

In the current session of the United States Congress, representatives and senators have introduced additional bills that relate to electric vehicle charging stations. The bills either directly address the charging stations or indirectly include them as part of a larger infrastructure initiative.\(^\text{21}\) In the past two years alone, Congress has introduced thirty-four bills pertaining to EVSE.\(^\text{22}\) The majority of these bills focus solely on providing funds to different executive or legislative entities\(^\text{23}\) or directing an entity or administrative head (such as the Secretary of Transportation, the Secretary of Energy, and the Comptroller General), to create a plan or directive for the installation of EVSE or EVSE-adjacent items.\(^\text{24}\)

The purpose of these bills is to have the federal government create a general plan and provide funding to the states so that the states can implement and effectuate a plan to provide EVSE and charging stations.\(^\text{25}\) It is likely that many of the bills may not pass, but it does seem that EVSE and legislation pertaining to electric vehicle charging stations is a focus of Congress at this time.

The Biden-Harris administration has emphasized serious federal investment in electric

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\(^{21}\) H.R. 6178, 118th Cong. § 1 (2023); S.J. Res. 38, 118th Cong. § 2 (2024); H.R. 1665, 118th Cong. § 1 (2023); S. 1099, 118th Cong. § 1 (2023) (identical to H.R. 4542, 118th Cong. § 1 (2023)); H.R. 4636, 118th Cong. § 1 (2023); H.R. 4437, 118th Cong. § 1 (2023); S. 3559, 118th Cong. § 2 (2024); H.R. 7273, 118th Cong. § 2 (2024); H.R. 432, 118th Cong. § 1 (2023); S. 1548, 118th Cong. § 1 (2023) (identical to H.R. 3180, 118th Cong. § 1 (2023)); H.R. 3180, 118th Cong. § 1 (2023); S. 1704, 118th Cong. § 1 (2023) (identical to H.R. 3468, 118th Cong. § 1 (2023)); H.R. 5090, 118th Cong. § 1 (2023); H.R. 2664, 118th Cong. § 1 (2023); H.R. 8187, 118th Cong. § 2 (2024); H.R. 6747, 118th Cong. § 1 (2023); H.R. 598, 118th Cong. § 1 (2023); H.R. 7782, 118th Cong. § 2 (2024) (identical to S. 4012, 118th Cong. § 2 (2024)); S. 2988, 118th Cong. § 1 (2023) (identical to H.R. 5784, 118th Cong. § 1 (2023)); S. 2838, 118th Cong. § 1 (2023) (identical to H.R. 5572, 118th Cong. § 1 (2023)); S. 3845, 118th Cong. § 2 (2024) (identical to H.R. 7498, 118th Cong. § 2 (2024)); S. 3099, 118th Cong. § 2 (2024) (identical to H.R. 5997, 118th Cong. § 1 (2023)); S. 3559, 118th Cong. § 2 (2024); S. 2893, 118th Cong. § 1 (2023) (identical to H.R. 5618, 118th Cong. § 1 (2023)); H.R. 7518, 118th Cong. § 2 (2024).

\(^{22}\) Id.

\(^{23}\) S. 1099, 118th Cong. § 1 (2023) (Identical to H.R. 4542, 118th Cong. § 1 (2023)); S. 3559, 118th Cong. § 2 (2024); H.R. 7273, 118th Cong. § 2 (2024); H.R. 432, 118th Cong. § 1 (2023); H.R. 5090, 118th Cong. § 1 (2023); H.R. 6747, 118th Cong. § 1 (2023).

\(^{24}\) H.R. 4636, 118th Cong. § 1 (2023); H.R. 6178, 118th Cong. § 1 (2023); H.R. 1665, 118th Cong. § 1 (2023); H.R. 4437, 118th Cong. § 1 (2023); S. 1548, 118th Cong. § 1 (2023) (Identical to H.R. 3180, 118th Cong. § 1 (2023)); H.R. 3180, 118th Cong. § 1 (2023); S. 1704, 118th Cong. § 1 (2023) (Identical to H.R. 3468, 118th Cong. § 1 (2023)); H.R. 8187, 118th Cong. § 2 (2024); S. 2893, 118th Cong. § 1 (2023) (Identical to H.R. 5618, 118th Cong. § 1 (2023)).

\(^{25}\) See H.R. 1665, 118th Cong. § 1 (2023); see also supra note 15*.
vehicle charging stations. The Bipartisan Infrastructure Law invests $7.5 billion in EV charging and plans to add 370,000 public charging stations to the nation’s already existing 130,000. The goal is to build a large network of public charges along federal roads and highways so that geographic location is not a hindrance to owning an electric vehicle.

The Federal Department of Transportation has created a National Electric Vehicle Infrastructure program (NEVI), a $5 billion initiative to create a coast-to-coast network of electric vehicle chargers focused on major highways. All states participate in the NEVI program, which has created a national standard for electric vehicle charging with the plan to make electric vehicle chargers available to 75,000 miles of road.

The goals of the federal government appear to align with those of New Jersey.

New Jersey

New Jersey has already exceeded its goal of adding 1,400 electric vehicle charging ports throughout the state before 2025. It has accomplished this through incentivization programs for businesses and state investments that emphasized major thoroughfares. New Jersey also recently introduced a significant slate of bills focusing on electric vehicle chargers.

A summary compilation of New Jersey’s actions and goals in this area may be found at the U.S. Department of Energy’s website.

Both the Executive and the Legislative branches in New Jersey are focusing on this issue. On January 8, 2024, Governor Phil Murphy signed into law an amendment to “An Act concerning electric vehicle supply equipment and Make-Ready parking spaces.” Several provisions were added, including details for calculating the required number of off-street parking spaces, guidance for municipalities in calculating the required number spaces in parking lots and garages, and an

27 Id.
28 Id.
29 See Id.
30 Id.
32 Id.
34 Id.
exception for low- or moderate-income multiple dwellings.\textsuperscript{36} This amendment does not address the Commission’s previous concerns regarding ambiguities presented regarding the term “retailer” or whether a developer of a two, three, or four family home is exempt from the requirements of the Act.\textsuperscript{37}

On January 16, 2024, the Governor signed into law an amendment and supplement to “An Act concerning electric vehicle charging incentive programs.”\textsuperscript{38} This establishes an uptime requirement for electric vehicle charging station incentive programs\textsuperscript{39} and expands the responsibilities of the Board of Public Utilities, while including the Department of Environmental Protection, the Department of Transportation, and other State agencies as entities with responsibilities in this area.\textsuperscript{40} The law provides that if recipients do not satisfy the minimum uptime requirements, “the State agency shall take appropriate action to revise the site-wide State-level uptime requirement . . . as necessary to ensure that it comports with the comparable federal NEVI Formula Program requirement.”\textsuperscript{41}

On the same day, Governor Phil Murphy also signed into law “An Act concerning the establishment of demonstration projects for the development of certain electric vehicle charging depots,” which supplements Title 48 of the Revised Statutes.\textsuperscript{42} This bill requires the Board of Public Utilities, in consultation with the New Jersey Economic Development Authority and the Department of Environmental Protection, to “develop a request for proposal to determine eligibility for the establishment of demonstration projects involving the development of electric vehicle charging depots for electric vehicle use.”\textsuperscript{43}

The New Jersey Legislature has introduced forty bills pertaining to electric vehicles during the 2024-2025 Session.\textsuperscript{44} Twenty of the bills involve maintenance and regulation.\textsuperscript{45} Others involve

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\item \textsuperscript{36} P.L. 2023, c. 220, eff. Jan. 8, 2024 (amending P.L. 2021, c. 171).
\item \textsuperscript{37} Memorandum from Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n on ‘Dev. and Installation of Elec. Vehicle Supply Equip. or Make-Ready Parking Spaces Pursuant to N.J.S. 40:55D-66.19 - 66.20’ to New Jersey Law Rev. Comm’n (May 8, 2023) (on file with the NJLRC and at njlrc.org). Selected portions of the original Memorandum have been reproduced herein for the reader’s convenience.
\item \textsuperscript{38} S.B. 3102, 2022 Leg., 220th Sess. (N.J. 2022) (identical to A.B. 4715) (enacted as P.L. 2023, c. 278, eff. Jan. 16, 2024).
\item \textsuperscript{39} P.L. 2023, c. 278, eff. Jan. 16, 2024 (amending P.L. 2019, c. 362).
\item \textsuperscript{40} Id.
\item \textsuperscript{41} Id.
\item \textsuperscript{42} S.B. 3224, 2022 Leg., 220th Sess. (N.J. 2022) (identical to A.B. 4794) (enacted as P.L. 2023, c. 316, eff. Jan. 16, 2024).
\item \textsuperscript{43} P.L. 2023, c. 316, eff. Jan. 16, 2024.
\item \textsuperscript{44} NJ LEGISLATURE, Bill Search, https://www.njleg.state.nj.us/bill-search (last visited June 6, 2024).
\item \textsuperscript{45} S.B. 243, 2024 Leg., 221st Sess. (N.J. 2024) (identical to A.B. 552) (requires manufacturers of electric vehicles to establish and implement electric vehicle battery management plans); S.B. 1288, 2024 Leg., 221st Sess. (N.J. 2024) (identical to A.B. 1527) (requires certain disclosures regarding lithium ion powered electric vehicles); S.B. 1687, 2024 Leg., 221st Sess. (N.J. 2024) (identical to A.B. 4005) (requires emergency medical technicians and firefighters to receive training concerning electric vehicle fires); S.B. 2881, 2024 Leg., 221st Sess. (N.J. 2024) (identical to A.B. 2162) (authorizes county vocational school districts to establish electric vehicle certification programs); S.B. 2908, 2024 Leg., 221st Sess. (N.J. 2024) (identical to A.B. 3903) (requires MVC to issue special windshield stickers making electric vehicles exempt from emission inspections); S.B. 3237, 2024 Leg., 221st Sess. (N.J. 2024) (identical
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financial and taxation matters. Twenty-four of the currently pending bills were introduced in the prior Legislative Session.
Conclusion

Electric vehicles, and the wide range of associated issues, are certainly important considerations for the New Jersey Legislature.

Given the pace at which the legal landscape, the technology, and the industry are changing, and the Legislature’s awareness of and work on relevant issues, Staff recommends the conclusion of the Commission’s work on this subject.

(identical to A.B. 4803); A.B. 1492, 2024 Leg., 221st Sess. (N.J. 2024) (previously introduced during the 2022-2023 Legislative Session as A.B. 5502); A.B. 1562, 2024 Leg., 221st Sess. (N.J. 2024) (previously introduced during the 2022-2023 Legislative Session as S.B. 3237 (identical to A.B. 4842)); A.B. 1881, 2024 Leg., 221st Sess. (N.J. 2024) (previously introduced during the 2022-2023 Legislative Session as A.B. 4922); A.B. 1976, 2024 Leg., 221st Sess. (N.J. 2024) (previously introduced during the 2022-2023 Legislative Session as A.B. 3545); A.B. 2599, 2024 Leg., 221st Sess. (N.J. 2024) (previously introduced during the 2022-2023 Legislative Session as A.B. 1111); A.B. 3035, 2024 Leg., 221st Sess. (N.J. 2024) (previously introduced during the 2022-2023 Legislative Session as A.B. 3493); A.B. 3093, 2024 Leg., 221st Sess. (N.J. 2024) (previously introduced during the 2022-2023 Legislative Session as S.B. 3650 (identical to A.B. 5278)).