

Judicial Proceedings

3/19/2015



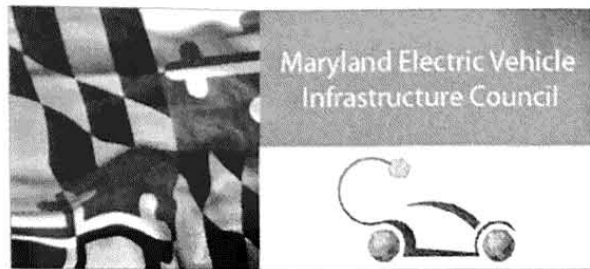
SB0762 - Senator Feldman

Real Property - Installation and Use of Electric Vehicle Recharging Equipment

Total Panels: 1 Total FAV: 2 Total FWA: 0 Total UNF: 3 Total INFO: 0 Total Witnesses: 5

3/19/2015 1:00 PM

Type	Position	Testify	Name	Organization	Address	Phone	Email
Panel - Bill Sponsor	FAV	Oral	Senator Feldman				
Individual	FAV	Written	Maryland Electric Vehicle Infrastructure Council				
Individual	UNF	Written	Tommy Tompsett	Maryland Multi-Housing Association	Baltimore	443-322-1104	
Individual	UNF	Written	Bryson Popham / Kevin Bauer	BOMA	191 Main St., Annapolis, MD 21401	410.268.6871	bpopham@papalaw.com
Individual	UNF	Written	Tom Ballentine	NAIOP - Commercial Real Estate Assoc.			



Committee: JPR

Date: 3/19/2015

Bill #: SB 762

Position: SUPPORT

Title: Real Property – Installation and Use of
Electric Vehicle Recharging Equipment

Explanation: Senate Bill 762 establishes that it is the policy of the State to promote, encourage, and remove obstacles to the use of electric vehicle recharging equipment, and it establishes standards relating to the installation and use of electric vehicle recharging equipment at condominiums, residential and commercial rental properties, and residential properties governed by homeowners associations.

The bill's provisions related to residential or commercial leases only impact those leases that are executed, extended, or renewed on or after October 1, 2015.

Comment: Maryland's Electric Vehicle Infrastructure Council (EVIC) supports SB 762 as one of its priority legislative recommendation for the 2015 session of the Maryland General Assembly.

Senate Bill 762 is a measure that will protect the right of individuals in multi-unit housing communities and businesses in leased buildings to install electric vehicle (EV) recharging stations. This bill is a recommendation of the Electric Vehicle Infrastructure Council at the request of charging station installers and their customers. The bill is modeled after legislation adopted in California.

Today, residential and commercial property owners may refuse to allow the installation of a recharging station, even if the tenant is willing to pay for the installation and operation of the equipment. Senate Bill 762 would remove this impediment by stating that a landlord cannot unreasonably deny a tenant the ability to install a recharging station if the tenant is willing to pay for all expenses related to the installation, operation and insurance of the equipment.

In addition, SB 762 will ensure that a condominium or homeowners' association cannot unfairly restrict installations of EV recharging stations by individual owners.

As of December 1, 2014 there were over 5,500 EVs registered in Maryland, up from 1,800 EVs in October 2013.¹ As we celebrate the dramatic increase of EVs in Maryland, we must ensure

¹Interim Report Presented to Governor Martin O'Malley and the Maryland General Assembly, Jan. 1, 2015.
Prepared by the Electric Vehicle Infrastructure Council.

that access to EV recharging infrastructure can keep up. Without the ability to recharge at home, Marylanders are less likely to purchase EVs and therefore miss out on benefits including savings on gas and maintenance costs and helping the environment.

Property owners, too, recognize the financial and environmental incentives to offering EV recharging—it is good for business.² Recharging stations give the property a positive “green” image, which can be used for marketing.

The Maryland General Assembly committed to this effort in 2007 by enacting The Clean Cars Act. In order to reduce GHG emissions by more than 7.7 million metric tons per year by 2025, the Act provides for the Maryland Clean Cars Program, which adopts California’s stricter vehicle emission standards. The Clean Cars Program requires that a percentage of new vehicles sold each year meet zero emission vehicle (ZEV) standards.

Most of Maryland’s greenhouse gas emissions come from power plants and mobile sources—cars and trucks. The transportation sector accounted for about 33 of Maryland’s gross GHG emissions in 2006 (about 35.5 million metric tons of carbon dioxide equivalent³), which was higher than the national average share of emissions from transportation fuel consumption (27 percent).⁴

EVs are crucial in protecting the environment and ensuring clean air but to reach these goals, a significant amount of investment in EV infrastructure is required. The General Assembly established the Electric Vehicle Infrastructure Council or EVIC in 2011 to evaluate and recommend strategies to facilitate the successful integration of EVs into Maryland’s existing transportation infrastructure. EVIC’s 2012 final report outlines an action plan to achieve a goal of 60,000 EVs on the road in Maryland by 2020, or 2.3% of the State’s passenger vehicle fleet.⁵

In 2012, 5,985 new multi-family housing units were authorized for construction in Maryland.⁶ SB 762 offers increased access to EV infrastructure in these new residences by prohibiting provisions in a residential lease that effectively prohibit the installation or use of EV recharging stations in a unit owner’s designated parking space as void and unenforceable.

In a written application to a condominium or homeowners’ association, the unit or home owner consents to a “checklist” which includes respecting the association’s architectural standards

http://www.mdot.maryland.gov/Office_of_Planning_and_Capital_Programming/Electric_Vehicle/Documents/2015_Interim_Report_012615.pdf

² Plug-in Electric Vehicle Charging Guide Property Owners, Managers and Homeowner Associations of Multi-unit Dwellings, Nov. 2013. California Plug-in Electric Vehicle Collaborative.

http://pevcollaborative.org/sites/all/themes/pev/files/docs/MuD_Guide_1_final.pdf

³ Sustainable Business Toolkit. <http://www.sustainablebusinesstoolkit.com/difference-between-co2-and-co2e/>. (An equivalent measure, CO_{2e} allows other greenhouse gas emissions to be expressed in terms of CO₂ based on their relative global warming potential).

⁴ 2013 Greenhouse Gas Reduction Act Plan, Oct. 2013. Prepared by the Maryland Department of the Environment. http://climatechange.maryland.gov/site/assets/files/1392/mde_ggrp_report.pdf.

⁵ Interim Report, Jan. 2015, EVIC, *supra*.

⁶ 2012 Maryland Statistical Handbook, Aug. 2013. Prepared by the Maryland Department of Planning. http://www.mdp.state.md.us/msdc/md_statistical_handbook12.pdf

using a licensed contractor, and paying for the electricity. The owner-applicant also assumes responsibility for all costs associated with EV recharging equipment.

If an owner's application goes unanswered by the governing body for over 60 days, the application is approved. In the landlord/tenant situation, the tenant makes a written request to the landlord to install a charging station. The tenant works with the landlord to assure safe installation of the charging station. The tenant is responsible for the expense of installing the station and the electricity used to charge the vehicle.

By ensuring Marylanders have the right to install EV recharging equipment, we will foster the EV industry to meet the state's environmental and clean air goals.

For these reasons, the EVIC respectfully requests that the Committee **grant SB 762 a FAVORABLE report.**

For Information:

Kristen Weiss (410) 841-2850
Maryland Department of Transportation
State Legislative Officer

Fred Hoover (410) 260-7544
Maryland Energy Administration
Director, Clean Energy

Jeff Fretwell (410) 537-3537
Maryland Department of Environment
Coordinator, Office of Smart Growth and Regulatory Reform



Vote NO on Senate Bill 762

Bill Title: Real Property – Installation and Use of Electric Vehicle Recharging Equipment

Hearing Date: March 19, 2015, Judicial Proceedings Committee

This testimony is offered on behalf of The Maryland Multi-Housing Association (MMHA), a professional trade association established in 1996, whose membership consists of owners and managers of more than 169,000 rental housing homes in more than 600 apartment communities. We also represent companies that manage over 35,000 condominium and home owners associations in over 250 communities. Collectively, our members house over 200,000 families in the State of Maryland. MMHA membership also includes more than 200 associate members that supply goods and services to the multi-housing industry.

MMHA **opposes** Senate Bill 762 for it mandates that a landlord approve a tenant's written request to install an electric vehicle recharging equipment. Such a mandate gives the tenant a stick out of the owner's proverbial "bundles of property rights" that was not bargained for by the parties. Douglas M. Bregman in *Maryland Landlord-Tenant Law Practice and Procedure* points out that the landlord-tenant relationship is composed of five essential elements with one of those elements being "***the occupant's subordination to the owner's title and rights.***" Page 17 (4th Edition, 2009) emphasis added. SB762 is altering the very essence of a landlord-tenant relationship and converting it into something other than a tenancy as defined by both common law and centuries of case law.

Furthermore, in the apartment community setting, the parking lots or garages where these recharging stations will be located are considered the common area of the property and liability will thus attach to the landlord if injury or damage occurs as a result of an accident with or a malfunction of an electric recharging station. The bill clearly



recognizes that an accident can happen for it requires a tenant to carry \$300,000 in general liability insurance with the landlord named as an “additional insured,” yet the bill forbids a landlord from proactively limiting potential liabilities on his or her own property by disallowing electric vehicle recharging stations altogether. In the case of a wrongful death suit, the \$300,000 liability insurance will be fraction of the award against the property owner. By way of comparison, the State of California has a similar law that requires the tenant to carry \$1,000,000 in general liability insurance with the landlord named as another insured.

MMHA further opposes SB762 for it likewise mandates the council of condominium owners to afford their residents space for electric car recharging stations by making void and unenforceable provisions of the governing documents that either restrict or make unreasonably expensive the installation of such charging stations in the common area of the community. The bill further provides for actual damages claims against the community and a civil penalty up to \$1000. SB762 fails, however, to take in to consideration past development regulations that do not meet existing parking demands for most communities. The scarcity of parking is a very significant governance and cost issue for many condominium boards. Furthermore, while the bill penalizes the owner for noncompliance with the law, it does not address a course of action the community may take should the property owner who installed the recharging station fail to pay fees associated with common area maintenance; or if he or she fails to complete the construction of the recharging station; or if he or she fails to pay the utility costs. Finally, retrofitting existing structures with the necessary wiring to install 240-Volt Level 2 charging stations can be complicated to say the least and is an additional burden for the council of condominium owners.

For all the above reasons, MMHA respectfully requests an unfavorable report Senate Bill 762.

Thomas R. Tompsett Jr., MMHA Director of Government Affairs (443)-322-1104



Bill No: SB 762 – Electric Vehicle Recharging Equipment
Committee: Judicial Proceedings
Date: 3/19/15
Position: Amendments Requested

The Apartment and Office Building Association of Metropolitan Washington (AOBA) requests amendments to SB 762. AOBA's members own or manage more than 30 million square feet of commercial office space and 112,000 apartment rental units in Montgomery and Prince George's counties.

This bill would require residential rental housing providers and commercial property owners to approve the written request of a tenant to install electric vehicle recharging equipment at a parking space allotted for the tenant. The request must meet the requirements of Article 625 of the National Electrical Code and comply with reasonable standards for the installation of the equipment established by the owner. Additionally, the tenant would be responsible for obtaining required permits, providing a written financial analysis and scope of work, costs of installation of the equipment and the monthly electric usage, and obtaining an insurance policy with the landlord named as an additional insured.

AOBA understands the desire of the State to promote the use of electric vehicles and the need for recharging infrastructure to support those vehicles. However, as property owners and managers we must assure that such equipment does not pose a hazard to our residents and commercial tenants and that the individual requesting the recharging equipment bears the full cost and risk of the equipment. Therefore, we request the following two amendments:

- **Separate Metering** – Although the bill obligates the tenant to pay the costs associated with the electrical usage of the recharging equipment, this will only be possible if the equipment has a separate electric meter. Therefore, we request that “separately metered” be inserted before “recharging equipment” on page 4, line 6, and on page 7, line 1, so that the tenant would pay these charges directly.

(over)

- **Insurance** – The bill requires the tenant to obtain a general liability insurance policy in the amount of \$300,000 and name the landlord as an additional insured party under the policy. In contrast, the California law after which this bill is modeled requires \$1 million of insurance. We believe that this higher level of insurance is appropriate to protect the tenant and landlord in the event that an individual was seriously injured in connected with an accident involving the recharging equipment. Therefore, we recommend substituting “\$1,000,000” for “\$300,000” on page 4, line 13 and page 7, line 6.

For these reasons AOBA urges adoption of the above amendments to SB 762.

For further information contact Ron Wineholt, AOBA Vice President of Government Affairs, at 301-261-1460 or rwineholt@aoba-metro.org .

March 19, 2015

The Honorable Brian Feldman
Member, Senate Finance Committee
Room 104, James Senate Office Building
Annapolis, MD 21401

Re: Senate Bill 762 - Real Property - Installation and Use of Electric Vehicle Recharging Equipment

Dear Senator Feldman,

On behalf of approximately 300 members of the Building Owners and Managers Association of Greater Baltimore, I am writing in opposition to Senate Bill 762 - Real Property - Installation and Use of Electric Vehicle Recharging Equipment. BOMA members develop, own and manage over 50% of commercial building space in the City of Baltimore and surrounding counties.

Both BOMA Baltimore and our national affiliate, BOMA International, support sustainable energy use in the conduct of our members' businesses. For example, a number of BOMA members have obtained LEED certification for their buildings – a designation universally acknowledged as a hallmark of sustainability. The use of electric vehicle charging equipment could be considered as one of the criteria for achieving LEED certification. In addition, BOMA members respond to their tenants' business requirements, and a number of BOMA buildings have such equipment installed at the request of tenants. In short, BOMA believes that market forces are vigorously moving the implementation of such equipment forward.

Respectfully, BOMA believes that the provisions of Senate Bill 762 that are applicable to a lease of commercial real property, found in Section 8-120 of the bill, are unduly burdensome and potentially interfere with the legal relationship between commercial landlords and their tenants. We believe, as stated above, that market forces are moving the development of this service forward at a commercially reasonable rate. We also believe that, prior to any action by the General Assembly on this subject, it should have a clear understanding of both the practical and legal implications of its proposed actions. We would be happy to meet with you to provide additional information on the use of electric vehicle recharging equipment in a commercial setting; however, we respectfully request that the provisions of Senate Bill 762 relating to commercial leases be removed pending your further examination of the issue.

Thank you for your time and attention to this important issue.

Very truly yours,



Kevin J. Bauer
Chairman, BOMA Legislative Committee

cc: Members, Senate Judicial Proceedings Committee
Bryson F. Popham, Esq.
Members, BOMA Legislative Committee

Phyllis A Marsh, Chair
Peter S. Philbin, Esq., Vice-Chair
Craig F. Wilson, Jr., CMCA, AMS, Vice-Chair

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Chris Majerle, PCAM, Member

Buck Mann, CMCA, Member
Robin C. Manougian, CIRMS, Member
Thomas C. Schild, Esq., CCAL, Member
Jeremy M. Tucker, Esq., Member

March 18, 2015

Senator Bobby A. Zirkin, Chair
Judicial Proceedings Committee
2 East
Miller Senate Building
Annapolis, MD 21401

Re: Senate Bill 762
Installation and Use of Electric Vehicle Recharging Equipment

Hearing Date: March 19, 2015

Position: Support with Amendments

Dear Senator Zirkin and Committee Members:

This letter is submitted on behalf of the Maryland Legislative Action Committee ("MD-LAC") of the Community Associations Institute ("CAI"). CAI represents individuals and professionals who reside in or work with condominiums, homeowners associations and cooperatives throughout the State of Maryland. MD-LAC supports SB762 ("Bill") with amendments.

Many of our member community associations have been discussing the issues relating to electric vehicle charging stations for a few years now, and we would say that most all are uniformly supportive of the concept. However, they are also uniformly concerned about authority being usurped and the potential liability for having charging stations within the community. Few have, as yet, installed an electric vehicle charging station as a common amenity, largely due to the capital cost and, again, the exposure to liability.

We are attaching a document prepared by CAI that illustrates the four (4) states currently having statutes on this subject. The statutes adopted in Oregon have a very reasonable and balanced approach to permitting charging stations while maintaining a degree of control in the hands of the HOA or condominium. California is also at the forefront on this issue.

Maryland Legislative Action Committee
Post Office Box 6636
Annapolis, Maryland 21401

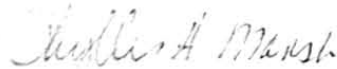
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Of particular concern with SB762 are the following:

1. Omission of language requiring the owner desiring to install a charging station to provide a *minimum* amount of liability insurance with the association as a named insured.
2. Requiring the licensing of the common spaces for installation of a charging station is more substantive than addressed in SB762. Most HOA and condominium governing documents require the approval of a supermajority of all owners (typically 66-2/3%) to allow a licensing of the common areas, a significant conflict between the governing documents and this legislation. The legislation should create an exemption from such provisions.
3. The legislation allows for an HOA or condominium to create a "new parking space where one did not previously exist" for a charging station. Is this intended to override local zoning restrictions? If so, it should probably be more specific about that.
4. The statute should create indemnification of the association by an owner permitted to use any portion of an association's common area.

We are available to answer any questions the Committee Members may have with regard to our proposed amendments. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500 or by email at lisa.jones@mdlobbyist.com or Phyllis Marsh, Chair of the MD-LAC, at 410-571-0238 or via e-mail at pnmarsh@aol.com.

Sincerely,
MD-LAC



Phyllis A. Marsh
Chair, CAI MD-LAC

Enclosures

CAI is a national organization dedicated to fostering vibrant, competent, harmonious community associations for more than thirty years. Its members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to common interest associations. As part of its mission, CAI advocates for legislative and regulatory policies that support responsible governance and effective management. As part of this purpose state Legislative Action Committees represent CAI members before state legislatures and agencies on issues such as governance, assessments collection, insurance and construction defects.

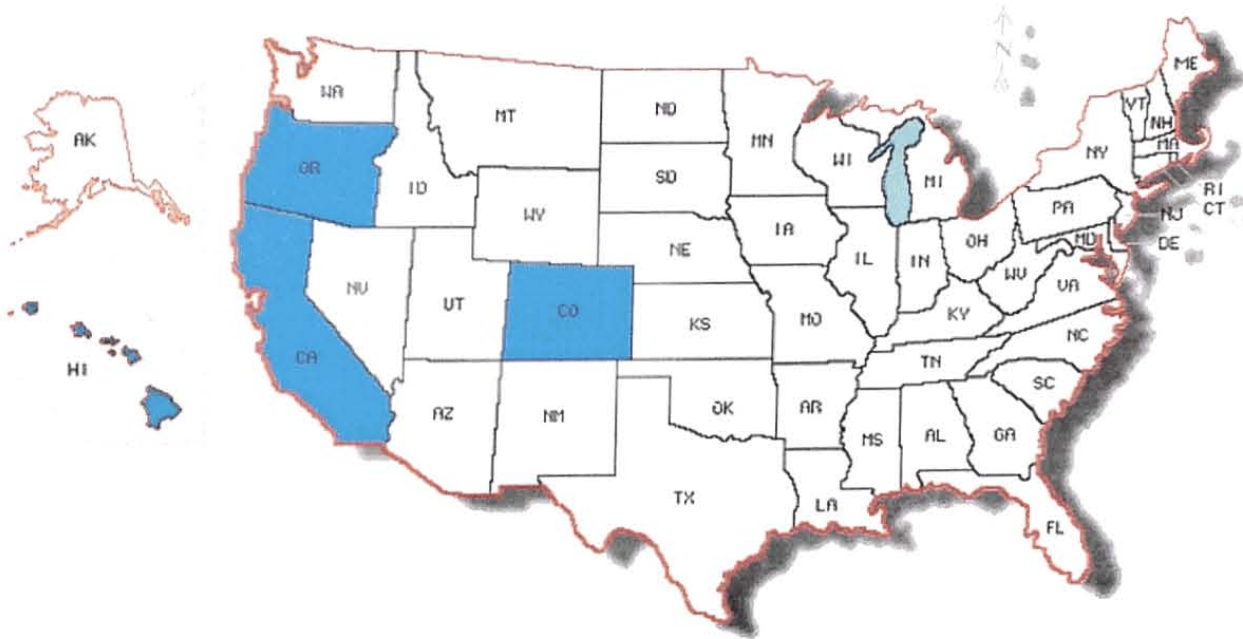
Maryland Legislative Action Committee
Post Office Box 6836
Annapolis, Maryland 21401



community

ASSOCIATIONS INSTITUTE

Electric Vehicle Charging Stations in Community Associations



States Prohibiting Unreasonable Restrictions on the Installation of Electric Vehicle Charging Stations

The following four states prohibit associations from unreasonably restricting or prohibiting the installation or use of an electric vehicle charging station:

California, Colorado, Hawaii, and Oregon

CAI supports effective state legislation—when it is deemed necessary for consumer protection, conversion limitations, protections for ongoing operations or other additions to existing statutes or common law, to ensure that community association housing is developed and maintained consistently with legitimate public policy objectives and standards that protect individual consumers, balancing the legitimate rights of the development industry.

Oregon statutes 94.762 and 100.627, which address electric vehicle charging stations in homeowners associations and condominiums, respectively, provide for the most detailed and balanced approach to the restriction in community association covenants.

NAIOP

MARYLAND CHAPTERS



THE ASSOCIATION FOR
COMMERCIAL REAL ESTATE

March 19, 2015

The Honorable Bobby A. Zirkin, Chair
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Oppose – SB 762 – Electric Vehicle Recharging Equipment

Dear Chairman Zirkin and Committee Members:

The Maryland Chapters of NAIOP (NAIOP) representing more than 700 companies involved in all aspects of commercial, light-industrial, office, and mixed-use real estate oppose SB 762. The provisions of SB 762 require installation of specialized electric vehicle recharging stations on the request of a tenant in commercial and mixed use real estate in ways that interfere with the contractual relationship between the building owner and the tenant and contradict the LEED green building certification strategies adopted many of our member companies.

Class A office space today is with few exceptions built to a certification of LEED Silver or better. Within the LEED process the building owner and design team choose from various performance characteristics to accumulate points that ensure the energy conservation, water conservation and overall green performance of the building. Installing an electric vehicle charger is one option that can earn points toward LEED certification. While some LEED buildings do choose to install vehicle charging stations there are other points accumulating strategies that also encourage the use of low emissions and fuel efficient vehicles, change commuting habits through ride sharing, fleet vehicles or reduce automobile use through the use of mass transit.

These other strategies may be just as effective and carry with them none of the added cost and complication of installing specialized recharging equipment for what may be a temporary tenant use. Those with experience installing charging stations report a total cost of between \$10,500 and \$11,500 to purchase the equipment and complete installation of one station. Our members oppose the mandatory nature of the installation and view the language in the bill designed to hold the tenant responsible as simply provisions the building owner would be have to attempt to enforce in court and satisfy via a judgement.

NAIOP respectfully requests your unfavorable report on Senate Bill 762.

Sincerely;

Tom Ballentine, Vice President for Policy
NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Senate Judicial Proceedings Committee Members
Nick Manis – Manis, Canning Assoc.