

HOUSE BILL NO. 4266

February 26, 2019, Introduced by Reps. Cole, Calley, Rendon, O'Malley, Green, Allor, Hauck, Inman, VanSingel, Whiteford, Miller, Lower, Wendzel and Mueller and referred to the Committee on Communications and Technology.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2979.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 2979. (1) In a trespass, unjust enrichment, or any other**
2 **action arising from or relating to an easement held by a Michigan**
3 **electric cooperative and brought against the holding Michigan**
4 **electric cooperative, there is a rebuttable presumption that there**



1 is no unreasonable or material increase in the burden on the
2 property subjected to the easement if the Michigan electric
3 cooperative can show 1 of the following:

4 (a) That the new or additional facility was installed above
5 the electric space, as defined by the Michigan electric
6 cooperative.

7 (b) That the new facility replaced a previously existing
8 facility in the same or substantially similar location on the pole
9 or poles.

10 (c) That the new or additional facility was installed within
11 the electric space or within the communications space, as defined
12 by the Michigan electric cooperative.

13 (d) That the new or additional facility was placed underground
14 along the same or substantially similar location of existing
15 underground electric facilities.

16 (2) In a trespass, unjust enrichment, or any other action
17 arising from or relating to an easement held by a Michigan electric
18 cooperative and brought against the holding Michigan electric
19 cooperative, the Michigan electric cooperative is not liable unless
20 the plaintiff establishes that 1 of the following applies to the
21 new or additional facility installed on an existing easement:

22 (a) The facility was installed outside the geographic bounds
23 of the express or prescriptive easement granted or obtained.

24 (b) The facility unreasonably or materially increases the
25 burden on the land.

26 (3) In a trespass, unjust enrichment, or any other action
27 arising from or relating to an easement held by a Michigan electric
28 cooperative and brought against the holding Michigan electric
29 cooperative, evidence of revenue realized by the Michigan electric



1 cooperative from services using the new or additional facility is
2 inadmissible for purposes of proving damages. Any damages in a
3 trespass, unjust enrichment, or any other action arising from or
4 relating to an easement held by a Michigan electric cooperative and
5 brought against the holding Michigan electric cooperative must be
6 determined by actual diminution of value of the property subject to
7 the easement and directly related to the installation of the
8 additional facility. However, damages awarded must not exceed \$3.00
9 per linear foot.

10 (4) As used in this section:

11 (a) "Facility" means new or expanded broadband fiber
12 infrastructure used, at least partially, for electric service
13 purposes.

14 (b) "Michigan electric cooperative" includes entities engaged
15 in the transmission or distribution of electric service and that
16 are either of the following:

17 (i) An electric cooperative headquartered in this state
18 organized as a cooperative corporation under sections 98 to 109 of
19 1931 PA 327, MCL 450.98 to 450.109, serving primarily members of
20 the cooperative electric utility.

21 (ii) Another cooperative corporation headquartered in this
22 state.

