

ACTIONS RELATING TO AN EASEMENT HELD BY A MICHIGAN ELECTRIC COOPERATIVE

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House Bill 4266 (proposed substitute H-2)
Sponsor: Rep. Triston Cole
Committee: Communications and Technology
Complete to 12-3-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4266 would add section 2979 to the Revised Judicature Act to address trespass, unjust enrichment, or other actions arising from or relating to an easement held by a *Michigan electric cooperative* and brought against the holding electric cooperative.

Michigan electric cooperative would include an entity engaged in the transmission or distribution of electric service that is either an electric cooperative headquartered in this state organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, serving primarily members of the cooperative electric utility, or another cooperative corporation headquartered in this state.

Under the bill, in an action brought against an electric cooperative in relation to an easement, there would be a rebuttable presumption that there was no unreasonable or material increase in the burden on the property subjected to the easement if the electric cooperative could show one of the following:

- The new or additional *facility* was installed above the electric space, as provided in the National Electrical Safety Code in effect on the date of installation.
- The new facility replaced a previously existing facility in the same or substantially similar location on the pole or poles.
- The new or additional facility was installed within the electric space or within the communication space, as provided in the National Electrical Safety Code in effect on the date of installation.
- The new or additional facility was placed underground along the same or a substantially similar location of existing underground electric facilities.

Facility would mean new or expanded broadband fiber infrastructure used, at least partially, for electric service purposes.

The cooperative would not be liable unless the plaintiff established that one of the following applied to the new or additional facility installed on an existing easement:

- The facility was installed outside of the geographic bounds of the express or prescriptive easement granted or obtained.
- The facility's purpose and use were expressly and specifically prohibited by the terms of the easement.
- The facility unreasonably or materially increased the burden on the land.

Evidence of revenue realized by the cooperative from services using the new or additional facility would be inadmissible for proving damages. Any damages would be determined by an actual diminution of value of the property subjected to the easement and directly related to the installation of the new facility. However, if damages were awarded, they could not exceed \$3 per linear foot.

The bill is tie-barred to HB 5266, which means that HB 4266 could not take effect unless HB 5266 were also enacted.

Proposed MCL 600.2979

FISCAL IMPACT:

The bill would not have a significant fiscal impact on state or local government.

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