

ACTIONS RELATING TO AN EASEMENT HELD BY A MICHIGAN ELECTRIC COOPERATIVE

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House Bill 4266 as introduced
Sponsor: Rep. Triston Cole
Committee: Communications and Technology
Complete to 5-7-19

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.
- 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.
- 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 either that the new or additional facility installed on an existing easement was installed outside of the geographic bounds of the express or prescriptive easement granted or obtained or that 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.

Proposed MCL 600.2979

FISCAL IMPACT:

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

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.