

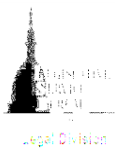
# HOUSE BILL NO. 5266

December 03, 2019, Introduced by Reps. Cole and Chirkun and referred to the Committee on Communications and Technology.

A bill to amend 2008 PA 167, entitled  
"Electric cooperative member-regulation act,"  
(MCL 460.31 to 460.39) by adding sections 8a and 8b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           **Sec. 8a. (1) A cooperative electric utility that is member-**  
2 **regulated under this act shall provide a video service provider,**  
3 **broadband provider, wireless provider, or any telecommunication**  
4 **provider with nondiscriminatory access to its poles upon just and**



1 reasonable rates, terms, and conditions for their attachments. A  
2 cooperative electric utility that is member-regulated under this  
3 act may deny a video service provider, broadband provider, wireless  
4 provider, or any telecommunication provider access to its poles on  
5 a nondiscriminatory basis for either of the following:

6 (a) If there is insufficient capacity.

7 (b) For reasons of safety, reliability, or generally  
8 applicable engineering standards.

9 (2) A video service provider, broadband provider, wireless  
10 provider, or any telecommunication provider and the cooperative  
11 electric utility that is member-regulated under this act shall  
12 comply with the process for make-ready work under 47 USC 224 and  
13 the orders and regulations implementing 47 USC 224 adopted by the  
14 Federal Communications Commission. A good-faith estimate  
15 established by the cooperative electric utility that is member-  
16 regulated under this act for any make-ready work for poles must  
17 include pole replacement if necessary. All make-ready costs must be  
18 based on actual costs not recovered through the annual recurring  
19 rate, with detailed documentation provided.

20 (3) A cooperative electric utility that is member-regulated  
21 under this act may require a video service provider, broadband  
22 provider, wireless provider, or any telecommunication provider to  
23 execute an agreement for attachments on reasonable terms and  
24 conditions if that agreement is required of all others.

25 (4) The attachment of facilities on the poles of a cooperative  
26 electric utility that is member-regulated under this act by a video  
27 service provider, broadband provider, wireless provider, or any  
28 telecommunication provider must comply with the most recent  
29 applicable, nondiscriminatory safety and reliability standards



1 adopted by the cooperative electric utility and with the National  
2 Electric Safety Code published by the Institute of Electrical and  
3 Electronics Engineers, in effect on the date of the attachment.

4 (5) A request for access to the poles of a cooperative  
5 electric utility that is member-regulated under this act by a video  
6 service provider, broadband provider, wireless provider, or any  
7 telecommunication provider must be in writing. Access must be  
8 granted or denied within the time frame established by the  
9 regulations implementing 47 USC 224 adopted by the Federal  
10 Communications Commission. If access is denied, the cooperative  
11 electric utility that is member-regulated under this act must  
12 confirm the denial in writing. The denial of access issued by the  
13 cooperative electric utility that is member-regulated under this  
14 act must be specific, include all relevant evidence and information  
15 supporting the denial, and explain how that evidence and  
16 information relate to a denial of access for reasons of  
17 insufficient capacity, safety, reliability, or generally applicable  
18 engineering standards.

19 (6) The costs of modifying a facility must be borne by all  
20 parties that obtain access to the facility as a result of the  
21 modification and by all parties that directly benefit from the  
22 modification. Each party that obtains access to the facility as a  
23 result of the modification and each party that directly benefits  
24 from the modification shall share proportionately in the cost of  
25 the modification. Except as otherwise provided in this subsection,  
26 a party with a preexisting attachment to the modified facility is  
27 considered to directly benefit from a modification if, after  
28 receiving notification of that modification, it adds to or modifies  
29 its attachment. A party with a preexisting attachment to a pole is



1 not required to bear any of the costs of rearranging or replacing  
2 its attachment if that rearrangement or replacement is necessitated  
3 solely as a result of an additional attachment or the modification  
4 of an existing attachment sought by another party, unless the  
5 modification is necessitated by the cooperative electric utility  
6 that is member-regulated under this act for an electric service,  
7 that includes, but is not limited to, smart grid technologies. If a  
8 party makes an attachment to the facility after the completion of  
9 the modification, that party shall share proportionately in the  
10 cost of the modification if that modification rendered the added  
11 attachment possible.

12 (7) An attaching party shall obtain any necessary  
13 authorization before occupying public ways or private rights-of-way  
14 with its attachment.

15 (8) As used in this section:

16 (a) "Attachment" means any wire, cable, antennae facility, or  
17 apparatus for the transmission of writing, signs, signals,  
18 pictures, sounds, or other forms of information installed by or on  
19 behalf of a provider of cable service or telecommunications service  
20 upon any pole owned or controlled, in whole or in part, by 1 or  
21 more cooperative electric utilities that are member-regulated under  
22 this act. Attachment includes, but is not limited to, a micro  
23 wireless facility or small cell wireless facility as those terms  
24 are defined in section 7 of the small wireless communications  
25 facilities deployment act, 2018 PA 365, MCL 460.1307, if either of  
26 the following are met:

27 (i) The micro wireless facility or small cell wireless facility  
28 is installed in the communications space, as that term is defined  
29 in the National Electrical Safety Code published by the Institute



1 of Electrical and Electronics Engineers as of the date of the  
2 installation.

3 (ii) The micro wireless facility or small cell wireless  
4 facility is installed in or above the electric space, as that term  
5 is defined in the National Electrical Safety Code published by the  
6 Institute of Electrical and Electronics Engineers as of the date of  
7 the installation, and that facility is installed and maintained by  
8 either of the following:

9 (A) A cooperative electric utility that is member-regulated  
10 under this act.

11 (B) A qualified contractor that meets both of the following:

12 (I) Generally applicable written contractor specifications of  
13 the cooperative electric utility that is member-regulated under  
14 this act.

15 (II) The definition of qualified as provided in the National  
16 Electrical Safety Code published by the Institute of Electrical and  
17 Electronics Engineers as of the date of the installation or  
18 maintenance, as applicable.

19 (b) "Broadband provider" means a person that provides  
20 broadband internet access transport services as that term is  
21 defined in section 2 of the metropolitan extension  
22 telecommunications rights-of-way oversight act, 2002 PA 48, MCL  
23 484.3102.

24 (c) "Telecommunication provider" means that term as defined in  
25 section 102 of the Michigan telecommunications act, 1991 PA 179,  
26 MCL 484.2102.

27 (d) "Video service provider" means that term as defined in  
28 section 1 of the uniform video services local franchise act, 2006  
29 PA 480, MCL 484.3301.



1 (e) "Wireless provider" means that term as defined in section  
2 9 of the small wireless communications facilities deployment act,  
3 2018 PA 365, MCL 460.1309.

4 Sec. 8b. (1) Claims in law or equity for disputes under  
5 section 8a are governed by this section.

6 (2) The Marquette County Circuit Court, the Ingham County  
7 Circuit Court, or the circuit court of the county where the  
8 cooperative electric utility that is member-regulated under this  
9 act has located its headquarters has jurisdiction to determine all  
10 disputes arising under section 8a and grant remedies under this  
11 section.

12 (3) In a dispute governed under this section, the cooperative  
13 electric utility that is member-regulated under this act is not  
14 liable for damages in law or equity unless the complainant  
15 establishes both of the following:

16 (a) That a rate, term, or condition complained of is not just  
17 and reasonable or that a denial of access was unlawful.

18 (b) One of the following:

19 (i) That the rate, term, or condition complained of is  
20 contained in a new pole attachment agreement or in a previously  
21 existing pole attachment agreement that is amended, renewed, or  
22 replaced by executing a new agreement on or after the effective  
23 date of the amendatory act that added this section.

24 (ii) That there has been an unreasonable denial of access or  
25 unreasonable refusal to enter into a new, amended, renewed, or  
26 replacement pole attachment agreement on or after the effective  
27 date of the amendatory act that added this section.

28 (4) The complainant has the burden of establishing a prima  
29 facie case that the rate, term, or condition is not just and



1 reasonable or that the denial of access was unlawful. If, however,  
2 a cooperative electric utility that is member-regulated under this  
3 act argues that the proposed rate is lower than its incremental  
4 costs, the cooperative electric utility that is member-regulated  
5 under this act has the burden of establishing that the proposed  
6 rate is below the statutory minimum just and reasonable rate. In a  
7 case involving a denial of access, the cooperative electric utility  
8 that is member-regulated under this act has the burden of  
9 establishing that the denial is lawful, once a prima facie case is  
10 established by the complainant.

11 (5) In a dispute governed under this section, there is a  
12 rebuttable presumption that the charged rate is just and reasonable  
13 if the cooperative electric utility that is member-regulated under  
14 this act can show that its charged rate does not exceed an annual  
15 recurring rate permitted under rules and regulations adopted by the  
16 Federal Communications Commission under 47 USC 224(d).

17 (6) If the court determines that the rate, term, or condition  
18 complained of is not just and reasonable, it may prescribe a just  
19 and reasonable rate, term, or condition and may do any of the  
20 following:

21 (a) Terminate the unjust and unreasonable rate, term, or  
22 condition.

23 (b) Require entry into a pole attachment agreement on  
24 reasonable rates, terms, and conditions.

25 (c) Require access to poles as provided under section 8a.

26 (d) Substitute in the pole attachment agreement the just and  
27 reasonable rate, term, or condition established by the court.

28 (e) Order a refund, or payment, if appropriate. The refund or  
29 payment may not exceed the difference between the actual amount



1 paid under the unjust and unreasonable rate, term, or condition and  
2 the amount that would have been paid under the rate, term, or  
3 condition established by the court for the period at issue, but not  
4 to exceed 2 years.

5 Enacting section 1. This amendatory act does not take effect  
6 unless House Bill No. 4266 of the 100th Legislature is enacted into  
7 law.

