

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.