

**SUBSTITUTE FOR
HOUSE BILL NO. 4266**

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

8 **(a) That the new or additional facility was installed above**
9 **the electric space, as provided in the National Electrical Safety**



1 Code in effect on the date of installation.

2 (b) That the new facility replaced a previously existing
3 facility in the same or substantially similar location on the pole
4 or poles.

5 (c) That the new or additional facility was installed within
6 the electric space or within the communications space, as provided
7 in the National Electrical Safety Code in effect on the date of the
8 installation.

9 (d) That the new or additional facility was placed underground
10 along the same or substantially similar location of existing
11 underground electric facilities.

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

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

20 (b) The facility's purpose and use are expressly and
21 specifically prohibited by the terms of the easement.

22 (c) The facility unreasonably or materially increases the
23 burden on the land.

24 (3) In a trespass, unjust enrichment, or any other action
25 arising from or relating to an easement held by a Michigan electric
26 cooperative and brought against the holding Michigan electric
27 cooperative, evidence of revenue realized by the Michigan electric
28 cooperative from services using the new or additional facility is
29 inadmissible for purposes of proving damages. Any damages in a



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

8 (4) As used in this section:

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

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

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

19 (ii) Another cooperative corporation headquartered in this
20 state.

21 Enacting section 1. This amendatory act does not take effect
22 unless House Bill No. 5266 of the 100th Legislature is enacted into
23 law.

