

Act No. 61
Public Acts of 2020
Approved by the Governor
March 10, 2020
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**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Reps. Cole and Chirkun

ENROLLED HOUSE BILL No. 5266

AN ACT to amend 2008 PA 167, entitled “An act to provide for the member-regulation of electric cooperatives; to prescribe the powers and duties of certain state agencies and officials; and to provide for certain penalties and remedies,” (MCL 460.31 to 460.39) by adding sections 8a and 8b.

The People of the State of Michigan enact:

Sec. 8a. (1) A cooperative electric utility that is member-regulated under this act shall provide a video service provider, broadband provider, wireless provider, or any telecommunication provider with nondiscriminatory access to its poles upon just and reasonable rates, terms, and conditions for their attachments. A cooperative electric utility that is member-regulated under this act may deny a video service provider, broadband provider, wireless provider, or any telecommunication provider access to its poles on a nondiscriminatory basis for either of the following:

- (a) If there is insufficient capacity.
- (b) For reasons of safety, reliability, or generally applicable engineering standards.

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

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

(4) The attachment of facilities on the poles of a cooperative electric utility that is member-regulated under this act by a video service provider, broadband provider, wireless provider, or any telecommunication provider must comply with the most recent applicable, nondiscriminatory safety and reliability standards adopted by the cooperative electric utility and with the National Electric Safety Code published by the Institute of Electrical and Electronics Engineers, in effect on the date of the attachment.

(5) A request for access to the poles of a cooperative electric utility that is member-regulated under this act by a video service provider, broadband provider, wireless provider, or any telecommunication provider must be in writing. Access must be granted or denied within the time frame established by the regulations implementing 47 USC 224 adopted by the Federal Communications Commission. If access is denied, the cooperative electric utility that is member-regulated under this act must confirm the denial in writing. The denial of access issued by the cooperative electric utility that is member-regulated under this act must be specific, include all relevant

evidence and information supporting the denial, and explain how that evidence and information relate to a denial of access for reasons of insufficient capacity, safety, reliability, or generally applicable engineering standards.

(6) The costs of modifying a facility must be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party that obtains access to the facility as a result of the modification and each party that directly benefits from the modification shall share proportionately in the cost of the modification. Except as otherwise provided in this subsection, a party with a preexisting attachment to the modified facility is considered to directly benefit from a modification if, after receiving notification of that modification, it adds to or modifies its attachment. A party with a preexisting attachment to a pole is not required to bear any of the costs of rearranging or replacing its attachment if that rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party, unless the modification is necessitated by the cooperative electric utility that is member-regulated under this act for an electric service, that includes, but is not limited to, smart grid technologies. If a party makes an attachment to the facility after the completion of the modification, that party shall share proportionately in the cost of the modification if that modification rendered the added attachment possible.

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

(8) As used in this section:

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

(i) The micro wireless facility or small cell wireless facility is installed in the communications space, as that term is defined in the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers as of the date of the installation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) One of the following:

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

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

(4) The complainant has the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable or that the denial of access was unlawful. If, however, a cooperative electric utility that is member-regulated under this act argues that the proposed rate is lower than its incremental costs, the cooperative electric utility that is member-regulated under this act has the burden of establishing that the proposed rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the cooperative electric utility that is member-regulated under this act has the burden of establishing that the denial is lawful, once a prima facie case is established by the complainant.

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

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

- (a) Terminate the unjust and unreasonable rate, term, or condition.
- (b) Require entry into a pole attachment agreement on reasonable rates, terms, and conditions.
- (c) Require access to poles as provided under section 8a.

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

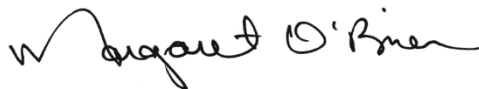
(e) Order a refund, or payment, if appropriate. The refund or payment may not exceed the difference between the actual amount paid under the unjust and unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the court for the period at issue, but not to exceed 2 years.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor