

HOUSE BILL No. 5896

November 6, 2014, Introduced by Rep. Tlaib and referred to the Committee on Energy and Technology.

A bill to provide for access to certain multiple-dwelling complexes by cable communications systems; to provide for reimbursement to property owners for costs incurred and diminution in property value in connection with providing such access; to require installation of cable communications equipment with sufficient capacity for other providers of television and radio services; to provide for shared use of cable communications equipment; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "multiple-dwelling complex cable access act".

3 (2) This act grants cable operators access to multiple-
4 dwelling complexes and grants alternative providers the right to
5 use cable equipment, to provide services to residents. This access

1 and use serves the public purposes of protecting residents from
2 excessive charges by property owners for services provided by cable
3 operators and alternative providers, allowing residents to receive
4 communications and information through these services, encouraging
5 competition, and increasing the variety of sources of programming
6 available to residents.

7 Sec. 2. As used in this act:

8 (a) "Access" means entrance onto the premises of the property
9 owner and an easement for purposes of surveying for, designing,
10 installing, inspecting, maintaining, operating, repairing,
11 replacing, or removing equipment used in the construction and
12 operation of a cable communications system.

13 (b) "Alternative provider" means any of the following:

14 (i) The operator of a master antenna television system (MATV),
15 satellite master antenna television system (SMATV), multipoint
16 distributions system (MDS), or direct broadcast satellite system
17 (DBSS).

18 (ii) A cable operator, with respect to a multiple-dwelling
19 complex where another cable operator is already providing cable
20 communications service.

21 (c) "Cable communications system" or "cable system" means a
22 cable system as defined in section 1 of the uniform video services
23 local franchise act, 2006 PA 480, MCL 484.3301, that serves 50 or
24 more total subscribers, regardless of their place of residence.

25 (d) "Cable operator" means that term as defined in section 1
26 of the uniform video services local franchise act, 2006 PA 480, MCL
27 484.3301.

1 (e) "Dwelling unit" means a single unit providing complete,
2 independent living facilities for 1 or more persons, including
3 permanent provisions for living, sleeping, eating, cooking, and
4 sanitation.

5 (f) "Franchise" means any authorization granted by a
6 municipality in the form of a franchise, privilege, permit,
7 license, or other municipal authorization to construct, operate,
8 maintain, or manage a cable communications system in any
9 municipality.

10 (g) "Master antenna television system" means any system that
11 serves only the residents of 1 or more apartment dwellings under
12 common ownership, control, or management and any commercial
13 establishment located on the premises of the apartment dwellings,
14 that transmits only television signals broadcast over the air by
15 stations which may be normally viewed or heard locally without
16 objectionable interference, and that does not provide any
17 additional service over its equipment other than closed-circuit
18 security viewing services.

19 (h) "Multiple-dwelling complex" means a site, lot, field, or
20 tract of land or water, other than a condominium project or mobile
21 home park, whether occupied or under construction, containing more
22 than 4 dwelling units.

23 (i) "Municipality" means a city, village, or township.

24 (j) "Person" means any individual, partnership, corporation,
25 association, governmental entity, or other legal entity.

26 (k) "Property owner" means any of the following:

27 (i) A person with a recorded interest in a multiple-dwelling

1 complex.

2 (ii) A person known to the operator of a cable communications
3 system to be an owner of a multiple-dwelling complex.

4 (iii) The authorized agent of a person described in subparagraph
5 (i) or (ii).

6 (l) "Resident" means either of the following:

7 (i) An individual owner of a cooperatively owned multiple-
8 dwelling complex.

9 (ii) A person renting a dwelling unit at a multiple-dwelling
10 complex from the property owner.

11 Sec. 3. (1) Subject to subsection (2), if a resident of a
12 multiple-dwelling complex requests a cable operator other than an
13 alternative provider to provide cable communications services to
14 the resident's dwelling, the property owner shall provide the cable
15 operator access to the multiple-dwelling complex. The access
16 provided shall be perpetual and freely transferable by 1 cable
17 operator to another.

18 (2) A property owner shall provide access under subsection (1)
19 to the cable operator only if that cable operator installs
20 equipment with channel capacity sufficient to allow use by
21 alternative providers so that residents have a choice of
22 alternative providers.

23 Sec. 4. (1) The installation of cable communications system
24 equipment under this act shall conform to reasonable conditions
25 necessary to protect the safety and functioning of the premises and
26 the convenience and well-being of the property owner and residents.

27 (2) A property owner may require a cable operator, before

1 installation or modification of cable communications system
2 equipment, to submit to the property owner plans for the placement
3 and securing of the cable system equipment. The cable operator may
4 implement the plans unless the property owner, within 7 days after
5 receipt of the plans, notifies the cable operator in writing of
6 reasonable objections to the plans. The cable operator shall modify
7 and resubmit the plans in response to timely objections from the
8 property owner.

9 (3) A cable operator shall install cable system equipment
10 under this act in an expeditious and workmanlike manner, in
11 compliance with applicable codes, and parallel to retail electric
12 service lines when economically feasible. A property owner may
13 require the cable operator to post a bond or equivalent security in
14 an amount not exceeding the estimated cost of installation of the
15 cable system equipment on the premises. If it otherwise meets the
16 requirements of this subsection, the security may be filed with a
17 municipality.

18 (4) The cable operator shall indemnify a property owner for
19 damage caused by the cable operator in the installation, operation,
20 maintenance, or removal of cable system equipment.

21 (5) A property owner may require a cable operator, after
22 reasonable written notice, to promptly relocate cable system
23 equipment on or within the premises of the property owner for the
24 purpose of rehabilitation, redecoration, or necessary maintenance
25 of the premises by the property owner.

26 (6) A cable operator shall bear the entire cost of the
27 installation, operation, maintenance, and removal of cable system

1 equipment in multiple-dwelling complexes within the initial
2 franchise service area.

3 (7) A cable operator shall do all the following:

4 (a) Reimburse the property owner for actual costs incurred by
5 the property owner with respect to the professional review of plans
6 described in subsection (2) and section 7(2), associated
7 contractual materials, and other documentation. The total
8 reimbursement for all plans shall not exceed \$100.00 for premises
9 containing fewer than 10 dwelling units and \$200.00 for other
10 premises.

11 (b) Compensate the property owner for the diminution in fair
12 market value of the multiple-dwelling complex, if any, offset by
13 special benefits to the multiple-dwelling complex, if any,
14 resulting directly from the installation of the nonexclusive cable
15 system.

16 Sec. 5. (1) To obtain access to a multiple-dwelling complex
17 under section 3, a cable operator shall serve written notice on all
18 property owners by certified mail or in the same manner as a
19 summons in a civil action. The notice shall contain the following:

20 (a) The name and address of the cable communications system.

21 (b) The name of each property owner.

22 (c) The address of the premises to which access is sought.

23 (d) The name and address of the resident requesting cable
24 communication services.

25 (e) The date of the franchise and the municipality granting
26 the franchise.

27 (f) The amount of compensation offered by the cable

1 communications system to the property owners.

2 (g) The date on which access is anticipated to commence.

3 (2) If a property owner does not accept the offer made by the
4 cable operator, the property owner shall, within 45 days of the
5 service of the notice and offer, notify the cable operator of the
6 refusal. Failure to notify the cable operator within 45 days as
7 provided under this subsection constitutes a refusal of the offer
8 and a denial of access.

9 Sec. 6. (1) A cable operator who has been denied access to a
10 multiple-dwelling complex under section 5 may file with the circuit
11 court for the county in which the multiple-dwelling complex is
12 located a petition that does all of the following:

13 (a) States that the cable operator has served the property
14 owners with the notice and offer required under section 5(1) and
15 that the offer has not been accepted.

16 (b) Requests a determination of the damages, if any, that may
17 result from the access.

18 (c) States the legal description of the multiple-dwelling
19 complex to which access is sought.

20 (2) Upon filing the petition with the circuit court, the cable
21 operator shall pay the property owner or deposit with the circuit
22 court an amount equal to the cable operator's offer of compensation
23 as provided under section 5(1). Upon filing of the petition with
24 the circuit court, the cable operator may file for record with the
25 county register of deeds a notice of the pendency of the
26 proceeding, describing with reasonable certainty the premises
27 affected and the purposes of the petition.

1 (3) The petition shall be served personally upon all persons
2 named in the petition as property owners in the same manner as a
3 summons in a civil action. However, personal service of the
4 petition upon a property owner is not required if the cable
5 operator, or the cable operator's agent or attorney, files an
6 affidavit stating on belief that the property owner is not a
7 resident of this state and that the cable operator has mailed a
8 copy of the notice to the property owner at the property owner's
9 place of residence, or that after diligent inquiry the property
10 owner's place of residence cannot be ascertained by the cable
11 operator. In that case, service shall be given by publication once
12 a week for 3 weeks in a newspaper of general circulation in the
13 municipality where the multiple-dwelling complex is located. If
14 this state is a property owner, the notice shall be served upon the
15 attorney general. Any property owner not served as provided under
16 this subsection is not bound by the proceeding unless the property
17 owner voluntarily appears in the proceeding.

18 (4) If proof of service and the petition are filed as provided
19 under this section, then, 30 days after the filing of the petition
20 and before making a determination of damages under this section,
21 the court shall enter an order granting access.

22 (5) For the purpose of making preliminary surveys and
23 examinations or for other purposes relative to any proceedings
24 under this section, the cable operator may lawfully enter a
25 property owner's premises. The cable operator shall not cause
26 unnecessary damage to the premises and is liable only for actual
27 damage done.

1 (6) For the purposes of section 4(7)(b), any party appearing
2 in a proceeding as provided under this section may introduce
3 evidence of damages, if any, and special benefits, if any, to the
4 multiple-dwelling complex occurring by reason of the installation
5 of the cable communications system.

6 (7) The court shall enter judgment not less than 10 days after
7 it has filed its determination of damages. The cable operator may
8 at any time up to 10 days after the filing of the court's
9 determination of the damages dismiss any proceeding under this
10 section against any property owner by notifying the property owner
11 and the court. If the proceeding is dismissed, the property owner
12 may recover from the cable operator reasonable costs and expenses
13 and temporary damages, if any.

14 (8) Any party to the circuit court proceeding may appeal the
15 court's determination within 90 days after the filing of that
16 determination.

17 (9) Unless the proceedings are dismissed under subsection (7),
18 upon completion of the proceedings, the attorney for the cable
19 operator shall make a certificate describing the access acquired
20 and the purpose or purposes for which acquired, and reciting the
21 fact of final payment of all awards or judgments in relation to the
22 access. The certificate shall be filed with the court clerk and a
23 certified copy thereof recorded with the county register of deeds.
24 The record is notice to all parties of the access to the premises
25 described in the petition.

26 (10) The cable operator shall pay all costs of the proceedings
27 under this section, including compensation to the property owner.

1 Sec. 7. (1) A cable operator granted access to a multiple-
2 dwelling complex under section 5 or 6 shall provide equipment with
3 sufficient channel capacity to be used by alternative providers.

4 (2) The cable operator shall determine the technical plan best
5 suited for providing the necessary channel capacity sufficient to
6 allow use by alternative providers. The plan shall be submitted to
7 the property owner. The cable operator may implement the technical
8 plan unless the property owner, within 7 days after receipt of the
9 plan, notifies the cable operator in writing of a reasonable
10 objection to the plan. The cable operator may modify and resubmit
11 the technical plan in response to the objection.

12 (3) The cable operator is not required to provide equipment
13 for connecting more than 1 television receiver per dwelling unit
14 within the multiple-dwelling complex. However, the cable operator
15 may provide duplicate connections at its discretion.

16 Sec. 8. (1) If a resident of a multiple-dwelling complex
17 requests an alternative provider to provide cable communications
18 services to the resident's dwelling, the alternative provider shall
19 notify the cable operator of a cable communications system serving
20 the multiple-dwelling complex. After agreeing with the alternative
21 provider on the amount of reimbursement to be paid to the cable
22 operator for use of the cable system equipment, the cable operator,
23 without unreasonable delay, shall make available to the alternative
24 provider the necessary cable system equipment.

25 (2) The alternative provider shall reimburse the cable
26 operator that installed the cable equipment for the cost of
27 equipment and installation at the multiple-dwelling complex on a

1 pro rata basis that reflects the number of subscribers of each
2 provider at the multiple-dwelling complex to the total number of
3 subscribers at the multiple-dwelling complex. In determining the
4 pro rata amount of reimbursement by any alternative provider, the
5 cost of equipment and installation shall be reduced to the extent
6 of cumulative depreciation of that equipment when the alternative
7 provider begins providing service. This section applies even if
8 equipment with channel capacity sufficient to allow use by
9 alternative providers is already installed as of the effective date
10 of this act.

11 (3) The reimbursed amount shall be paid in 1 installment for
12 each instance of requested use. The payment need not be refunded
13 upon subscriber cancellation of the alternative service.

14 (4) The cable operator, upon written request, shall make
15 available to the alternative provider financial records supporting
16 the reimbursement cost requested.

17 Sec. 9. If the premises upon which cable communications
18 equipment has been installed is subsequently condemned by the state
19 or by another entity granted the power of eminent domain under
20 state law, the cable operator's measure of damages for the taking
21 shall be limited to the actual compensation originally paid by the
22 cable operator to the property owner under this act.

23 Sec. 10. A person shall not interfere with the installation,
24 operation, inspection, maintenance, or removal of cable
25 communications system equipment under this act. A person who
26 violates this section may be ordered to pay a civil fine of not
27 more than \$2,000.00. Each day on which a violation occurs

1 represents a separate violation. A violation of this section may be
2 prosecuted by the prosecutor of the county or municipality in which
3 the violation occurred or by the attorney general. The fine shall
4 be deposited in the general fund of the county, municipality, or
5 this state, as appropriate, depending on whose attorney prosecuted
6 the action.

7 Sec. 11. This act does not require residents to hook up or
8 subscribe to any services offered by any cable operator or
9 alternative provider.

10 Sec. 12. Any provision in a contract between a property owner
11 and a cable operator or a property owner and a resident that
12 conflicts with this act is invalid and unenforceable.