

**Senate Bill No. 326**

(By Senators Sypolt, Unger, Wells, Browning and Beach)

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[Introduced January 27, 2011; referred to the Committee on  
Transportation and Infrastructure; and then to the Committee on  
the Judiciary.]  
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A BILL to amend and reenact §36-3-5a of the Code of West Virginia, 1931, as amended, relating to estates and property; form and effect of deeds and contracts; and requiring easements and right-of-way instruments for roads, pipelines, power lines, telephone lines or other manners of communications or public uses to allow inclusion of the use and installation of a fiber-optics communication conduit, or whatever current or state-of-the-art communication conduit that is being employed at the time of the creation of the easement or right-of-way.

*Be it enacted by the Legislature of West Virginia:*

That §36-3-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.**

**§36-3-5a. Easement and right-of-way; description of property;**

1                   **exception for certain public utility facilities and**  
2                   **mineral leases.**

3           (a) Any deed or instrument that initially grants or reserves  
4 an easement or right-of-way shall describe the easement or right-  
5 of-way by metes and bounds, or by specification of the centerline  
6 of the  
7 easement or right-of-way, or by station and offset, or by  
8 reference to an attached drawing or plat which may not require a  
9 survey, or instrument based on the use of the global positioning  
10 system which may not require a survey: *Provided*, That oil and gas,  
11 gas storage and mineral leases shall not be required to describe  
12 the easement, but shall describe the land on which the easement or  
13 right-of-way will be situate by source of title or reference to a  
14 tax map and parcel, recorded deed, recorded lease, plat or survey  
15 sufficient to reasonably identify and locate the property on which  
16 the easement or right-of-way is situate: *Provided, however*, That  
17 the easement or right-of-way is not invalid because of the failure  
18 of the easement or right-of-way to meet the requirements of this  
19 subsection.

20           (b) Notwithstanding any other provision of this code or law  
21 to the contrary, when an easement or right-of-way is created for a  
22 road, pipeline, power line, telephone line or other manner of  
23 communications or public use, the instrument creating the easement  
24 or right-of-way shall contain a requirement to allow inclusion of

1 the use and installation of a fiber-optics communication conduit,  
2 or whatever current or "state of the art" communication conduit  
3 that is being employed at the time of the creation of the easement  
4 or right-of-way.

5       ~~(b)~~ (c) This section does not apply to the construction of a  
6 service extension from a main distribution system of a public  
7 utility when such service extension is located entirely on, below,  
8 or above the property to which the utility service is to be  
9 provided.

10       ~~(e)~~ (d) The clerk of the county commission of any county in  
11 which an easement or right-of-way is recorded pursuant to this  
12 section shall only accept for recordation any document that  
13 complies with this section and that otherwise complies with the  
14 requirements of article one, chapter thirty-nine of this code,  
15 without need for a survey or certification under section twelve,  
16 article thirteen-a, chapter thirty of this code.

NOTE: The purpose of this bill is to require easements and right-of-way instruments for roads, pipelines, power lines, telephone lines or other manners of communications or public uses to allow inclusion of the use and installation of a fiber-optics communication conduit, or whatever current or "state of the art" communication conduit that is being employed at the time of the creation of the easement or right-of-way.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.