Editor's Notes
EDITOR'S NOTES

The Subcommittee on Coal Mining of the West Virginia Legislature's Joint Committee on Government and Finance recently completed a study of the State's coal industry. The study concluded that the State of West Virginia does not have any overall policy toward the State's coal industry, much less a positive program to encourage its health and growth. In the past such a lack of policy might have been justified, but current conditions indicate the definite need for a State policy to promote the coal resources of the Mountain State.¹

The Subcommittee cited three justifications for its conclusion: (1) Positive steps can be taken to openly and legitimately help the coal industry, partially offsetting the production costs, State regulations, taxes, and restrictions on the industry; (2) efforts to help the industry as a whole can bring a wide range of public benefits, such as increased employment and tax revenues and environmental and mine safety improvements; and (3) if the State does not act soon to formulate policy, purchasers of coal will become locked in to supplies from other regions.²

Coal Resources and Reserves

West Virginia has a greater amount of coal than any other Appalachian state and larger estimated low sulfur reserves than all other states east of the Mississippi River,³ as is shown by Chart 1.

<table>
<thead>
<tr>
<th></th>
<th>Low Sulfur (1% and less)</th>
<th>Medium Sulfur (1.1%-2%)</th>
<th>High Sulfur (over 2%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia</td>
<td>47,471,000</td>
<td>35,110,300</td>
<td>20,084,500</td>
</tr>
<tr>
<td>Eastern Kentucky</td>
<td>22,131,800</td>
<td>3,945,600</td>
<td>3,337,400</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,059,000</td>
<td>1,637,100</td>
<td>123,900</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1,198,400</td>
<td>20,049,300</td>
<td>36,703,800</td>
</tr>
<tr>
<td>Alabama</td>
<td>2,078,500</td>
<td>10,604,500</td>
<td>894,800</td>
</tr>
<tr>
<td>Wyoming</td>
<td>12,818,800</td>
<td>0</td>
<td>1,100</td>
</tr>
<tr>
<td>Illinois</td>
<td>573,700</td>
<td>7,557,500</td>
<td>127,758,000</td>
</tr>
</tbody>
</table>

¹Subcommittee on Coal Mining, West Virginia Legislature Joint Committee on Government and Finance, A Study of the West Virginia Coal Industry and Ways to Help It Overview, at 1 (1974) [hereinafter cited as Subcommittee on Coal Mining].
²Id. Overview at 2.
³Id. ch. 1, at 1.
⁴Id. ch. 1, at 9.
Subbituminous and Lignite Resources of Selected States, 1965 (x 1000 tons)

<table>
<thead>
<tr>
<th>State</th>
<th>Montana</th>
<th>Wyoming</th>
<th>North Dakota</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>215,168,500</td>
<td>107,895,500</td>
<td>319,116,400</td>
</tr>
<tr>
<td></td>
<td>3,965,100</td>
<td>0</td>
<td>31,581,600</td>
</tr>
<tr>
<td></td>
<td>464,700</td>
<td>8,600</td>
<td>0</td>
</tr>
</tbody>
</table>

After finding that a current listing of the State's coal reserves or the properties of coal from the State's producing mines is not maintained by any State agency, the Subcommittee suggested that the West Virginia Department of Mines compile data concerning characteristics of the coal produced from all large deep and surface mining operations. The report further suggested that a department of the State government be charged with publication of this information as well as an ongoing coal promotional program. With regard to the recently initiated survey of major West Virginia coal seams by the State Geological Survey, the Subcommittee recommended additional funding to hasten the completion of the program.

Mr. Hardesty, Mr. Pearson, and the Subcommittee all see a need for formulation of State policy concerning coal, but Mr. Hardesty seems to envision a more limited role for the State, preferring that the State provide an environment to foster industrial growth rather than engaging in activities traditionally performed by private enterprise. Although, as Mr. Hardesty commented, the effi-

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3Id. ch. 1, at 3-5.

The West Virginia constitution provides that “taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law . . . .” W. VA. CONST. art. X, § 1. The West Virginia Code further requires: “All property shall be assessed annually as of the first day of July at its true and actual value . . . .” W. VA. CODE ANN. § 11-3-1 (1966). An extensive mapping program, necessary to locate coal property and promote uniform taxation, has been completed by the State Tax Department. See Melton, Coal Reserves Should Be the Subject of Equitable Ad Valorem Taxation, supra. However, a value must also be assigned to the coal in place. This complex task necessitates consideration of many variables, since coal’s value is directly related to its ability to produce income. See Campbell, Johnson, & Hays, Ad Valorem Taxation of Coal Bearing Lands in West Virginia—A Viewpoint of the Coal Industry, supra. Even if an equitable assessment procedure is adopted, reliable information must still be compiled. The legislative Subcommittee on Coal Mining found that: “Detailed and complete information about the location, and characteristics, of coal currently being produced by individual West Virginia mines does not exist in any State agency or department today.” Subcommittee on Coal Mining, supra note 1, ch. 1, at 3.

*Subcommittee on Coal Mining, supra note 1, ch. 1, at 4.
ciency of public enterprise does not compare at all favorably with that of private enterprise, a key question remains to be answered: Do the economic interests of a large international energy corporation coincide with the best interests of West Virginia and the State's coal industry?

Production and Productivity

The Subcommittee on Coal Mining found that productivity per man day and actual production has been falling in West Virginia mines since 1965. Thus, despite alleged anti-productivity effects of the 1969 Federal Coal Mine Health and Safety Act, productivity was declining four years before the Act had any impact. The report attributed decreasing productivity to unauthorized work stoppages, possibly caused by an ineffective grievance procedure, and a lack of properly trained manpower.7

Four State actions were recommended to alleviate productivity problems: (1) State aid in financing the opening and expansion of West Virginia mines; (2) State assistance in dealing with unauthorized work stoppages, such as a committee of labor, industry, and State representatives to develop ways to modify traditions in the coal region that induce wildcat strikes; (3) State assistance to develop new techniques for mining, cleaning, and gasifying coal; and (4) State training of miners and foremen. Increased training of miners and foremen was cited by representatives of labor and industry as a requisite to improved mine safety. The controversy is over who will administer the training—the State or industry.8

Both the study and the speakers agree that the solutions to the manpower and labor problems lie in the same area—training of

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7The Subcommittee cited a 1971 survey of West Virginia work stoppages by the Appalachian Center of West Virginia University, which concluded that “the grievance procedure agreed to between the U.M.W.A. and the bituminous coal operators is not working effectively.” The survey questioned the U.M.W.A. for having “never sponsored an educational program which would train mine committee men for the job of handling grievances.” Id. ch. 2, at 1-2.

8The Subcommittee stated: “Both company and union officials seem to agree that conducting such a training program would be a proper role for the State Department of Mines.” Id. ch. 2, at 3. However, in its statement to the Subcommittee concerning safety training, the United Mineworkers contended that “[t]raining courses, paid for by the operators, are a necessity—and sooner or later must become a reality.” Id. Item D, at 7. The legislative study does not disclose why the State should assume a greater role in training coal miners than in training other industrial workers. Employee training has historically been a function of private enterprise, and any departure from this tradition establishes a dangerous precedent.
miners. Since most current labor disputes involve safety questions, it is the consensus of all involved that proper training of miners in safe and healthful work practices will cut down on the number of safety related incidents which lead to work stoppages. If the suggestions are adopted, the West Virginia Department of Mines will be called on to take a leading role in both the recruitment and training of new miners and the retraining of experienced miners. Such a program could either supplement or replace present private sector training programs.

Foreign Market Problems

Between thirty and forty percent of West Virginia coal production is exported, and about seventy-five percent of total American exports of coal are from West Virginia. The Subcommittee expressed concern over competition from foreign markets, noting imports of low sulfur Polish coal to the Northeast with "encouragement from the State Department" and decreasing West Virginia exports to Japan.

To remedy the foreign market problems of the West Virginia coal industry, the report suggested: (1) Direct contact with Japanese buyers by well informed representatives of the State; (2) financing improvements in the Hampton-Norfolk dock area and encouraging regional rail service improvements by West Virginia, and possibly Virginia, to assist sales to Japan; (3) encouragement of Japanese part-ownership of West Virginia coal producers; and (4) federal government action to encourage Japanese purchase of West Virginia coal and to prevent further importation of coal from foreign markets such as Poland.

Western Coal Versus West Virginia Coal

Western coal, comprised primarily of lignite and subbituminous coal, is different in physical appearance from West Virginia coal. More importantly, however, Western coal is lower in BTU content, higher in water content, and is found in thicker seams

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9Id. ch. 3, at 1.

10Id. ch. 3, at 5. Federal officials were quoted by National Coal Association representatives as saying: "Imported low sulfur coal wouldn't affect domestic industry . . . because Western coal is uneconomic for East coast markets, and there isn't enough eastern low sulfur coal to meet a need generated by conversions." Id.

11Id. ch. 3, at 6.
than West Virginia coal. Although widespread use of Western coal in Eastern utility plants is impeded by high transportation costs, the Subcommittee concluded that the challenge to West Virginia coal is very real. Furthermore, State action is necessary because many of the coal and utility firms operating in West Virginia own Western reserves or have other reasons for developing Western coal to the exclusion of Appalachian coal.

To combat competition from Western coal, the Subcommittee recommended: (1) A vigorous promotional campaign by the State urging use of West Virginia coal by utilities; (2) Public Service Commission examination and disallowance of any rate increases caused by a utility purchasing and importing Western coal to a West Virginia regulated utility; and (3) Federal consideration of surface mining and coal leasing policies to restrict the immediate development of Western coal. The report clearly implies that a federal limitation or ban of surface mining would have long term benefits for the West Virginia coal industry.

The approach to the problems currently being encountered by West Virginia coal in the domestic market against Western coal and in the foreign market aptly illustrates the divergent views of the Subcommittee and Mr. Hardesty. The role of government, in the opinion of Mr. Hardesty, is to provide an environment in which meaningful decisions and compromises can be reached by the parties involved in disputes. The legislators, on the other hand, envision a more active role for the State, leading the parties toward a settlement. The goal of both the Subcommittee and Mr. Hardesty is identical—promotion of the sale of West Virginia coal.

Environmental Regulations and Their Effects

Any discussion of the effect of environmental regulations on the West Virginia coal industry should attempt to answer the question: Is the large supply of West Virginia coal suitable for use in steam generation under present environmental regulations? Although the demand for clean air resulted in utility fuel conversions from coal to oil during the 1960's, the current energy crisis has

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11Id. ch. 4, at 1-2.
12Id. ch. 5, at 6. Although the Subcommittee recognized the importance of the issue raised earlier in these notes—Do the economic interests of a large international energy corporation coincide with the best interests of West Virginia and the State's coal industry?—they did not attempt an answer.
13Id. ch. 4, at 6.
reemphasized the importance of coal as a fuel source. However, the Subcommittee expressed fears that West Virginia will not benefit fully from this reemphasis due to sulfur dioxide emission restrictions. Mr. Hardesty reinforced this concern by opining that West Virginia coal has very low marketability potential. Before the medium and high sulfur coal can be burned it will have to be crushed and cleaned to remove a sufficient amount of sulfur, or an efficient stack gas removal process will have to be found. Neither of these approaches is presently adequate.¹⁵

Chart 1 illustrates that West Virginia has large reserves of low sulfur coal, and the Subcommittee report was critical of the national attitude ignoring their existence when calculating the domestic supply of low sulfur coal suitable for steam generation.¹⁶ The report concluded that this coal should be used for steam generation, citing in support of this conclusion a sale of 1.25 million tons of 0.6% sulfur metallurgical-grade coal to Alabama Power Company.¹⁷ However, Mr. Hardesty and Mr. Pearson emphatically expressed their belief that low sulfur metallurgical coal should not be used for steam generation but rather should be reserved for steelmaking.

The Subcommittee’s recommendations were understandably founded on the belief that there was no reason to withhold low sulfur metallurgical coal from the steam coal market.¹⁸ The recommendations included: (1) Blending low or medium sulfur West Virginia coal with high sulfur West Virginia coal to allow utilities to meet air quality standards; (2) State support for federal restrictions on the surface mining of Western coal;¹⁹ and (3) creation of a

¹⁵Widespread disagreement exists over whether the technology for stack gas removal is currently available. Id. ch. 6, at 11-12.
¹⁶Id. ch. 5, at 2-3.
¹⁷Id. ch. 5, at 1. The basic characteristics of steam coal were not described by the report. Steam generation plants are often designed to burn specific fuels, but they cannot burn different fuels indiscriminately. For example, American Electric Power Company has stated that it closed its Cabin Creek Plant because new particulate control equipment could not be constructed, and burning low sulfur coal to meet emission standards limits the effectiveness of dust collection equipment. Id. ch. 6, at 6.
¹⁸Metallurgical coal is normally substantially more expensive than high sulfur coal. Before the use of metallurgical coal becomes economical, the price of competing fuels—e.g., oil—will have to increase.
¹⁹The proposed federal law leaves enforcement up to the individual states, and the Senate version of a federal surface mine law exempts many current and future Western surface mines if they are on Indian reservations. Id. ch. 6, at 13.
State agency to compile coal data and help potential purchasers locate West Virginia coal meeting their specifications. If the infeasibility of using low sulfur metallurgical coal for steam generation is accepted, the future marketability of West Virginia coal appears bleak, unless the air quality standards are rolled back or efficient sulfur removal technology is developed. The Subcommittee did not recommend relaxation of environmental standards.

Surface Mine Reclamation

The legislative study group seems committed to the idea that a high quality result should be legislated in the field of surface mine reclamation, without legislating specific reclamation techniques. In several parts of the report, the Subcommittee recommended that the State oppose the extensive use of surface mining in Western States. However, the report did not take an abolitionist view of West Virginia surface mining. The report suggested legislation which would eliminate highwalls and spoilbanks on slopes of over twenty-five degrees, but also suggested the legislation not specify the technique to be used. The report further recommended a trade-off to benefit the industry, such as ending bench limits, limiting drainage ditch requirements, and allowing surface mining near parks and roads. Taken as a whole, the discussion of surface mining was less definitive than other areas of the report—perhaps an indictment that the issue is still very sensitive politically.

While the refusal to suggest relaxation of current air quality standards may be of some concern to the industry, the language suggesting a "tradeoff" in the reclamation field should offer some solace. Such a suggestion runs parallel to Mr. Hardesty's call for reasonable compromise in the field of environmental regulation. With the decline of the abolitionist movement in the surface mining field, such a trade-off may be accomplished in the near future. However, if one accepts Dr. Miernyk's contention that the current increase in coal's value should lead to the establishment of policies which will result in an ultimate shift of the State's economic base, the wisdom of such a trade-off decision appears doubtful.

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20The study noted that, in 1972, American Electric Power Company had to deal with thirty separate coal producers plus its captive operations to supply coal for two burners at its John Amos plant. A single Western coal company can supply the amount needed for three such burners. Id. ch. 6, at 7.

21The report compared the surface mine laws of the Appalachian States but did not draw any firm conclusions as to the adequacy of West Virginia laws.
Mine Health and Safety

Although the effect of the 1969 Federal Coal Mine Health and Safety Act on deaths and injuries in mining is unknown, such an Act is unquestionably needed. The Subcommittee recommended that mine health and safety be the responsibility of only one agency and that the State take an expanded role in general training of miners and safety training in particular. More specifically, the report suggested funding the State Department of Mines to train new miners and miners beginning a new type of work in a mine.

In the area of governmental restrictions on coal production outside the environmental field, the study takes an approach to the Coal Mine Health and Safety Act of 1969 closely akin to that expressed by Mr. Wimpfen. It recognizes the decline in per-miner productivity since the implementation of the act, but also notes that the decline began well before 1970, when implementation of the Act began. Part of the decline should, according to the study, be attributed to the use of modern mining equipment which decreases substantially the amount of coal recoverable from a particular seam.

State Agencies and Programs

Finding that it was not possible for a State official or a private citizen to easily gather information relating to the coal industry, the study recommended creation of an Office of Coal Promotion or some similar entity. Such an office would integrate information and coordinate programs affecting the State’s coal industry.

Tax Incentives for Coal Mining

The West Virginia coal industry paid the State $41,597,441 in business and occupation taxes during 1972. The Subcommittee noted that this tax, because it does not consider profit in relation to the price of coal sold, could discourage new mine investment, and, to offset this factor, the report recommended a business and occupation tax credit during the first three years of operation of a new mine.

[id. ch. 7, at 1.
2 Id. ch. 7, at 2.
3 Id. ch. 11, at 1.
4 Id. ch. 12, at 1.
5 The business and occupation tax is criticized as being particularly severe on
Another incentive recommended by the Subcommittee was taxation of "pollution control facilities" at "salvage value" for ad valorem property tax purposes. The 1973 Legislature did authorize a tax rate based on the "salvage value" of "pollution control facilities" for business enterprises. Any change in the method of property taxation may require a constitutional amendment, a possibility recognized by the legislative study group.

The Subcommittee also considered the possibility of imposing a severance tax on coal, perhaps together with removal of the property tax on coal. Ohio and Kentucky have severance taxes, and, although their characteristics vary, the report did not find that either had harmed coal production.

Perhaps the most encouraging statement in the study dealing with taxation is the call for an overall evaluation of the State's method of taxing the coal industry and the development of an ongoing policy of taxation which will assure the maximum benefit for both the industry and the people of the State of West Virginia. Such a program, if it is developed, would put an end to the situation now persisting in which revenue needs are satisfied from the most convenient source at hand when fiscal needs become pressing.

Furthering this penchant for long-term planning, the study group also suggested the formation of a single State agency to oversee all West Virginia coal policy. Such a superagency would attempt to attract coal producing and consuming industries and solve problems in the supply of production necessities such as fuel, rock dust and roof bolts, so that shortages of these needed commodities do not hinder production. Conceivably, the other aspects

new businesses, which often operate without profits in their early years but incur a B. & O. tax liability identical with that of established, profitable firms. All new firms—not just those in the coal industry—experience this difficulty.


Subcommittee on Coal Mining, supra note 1, ch. 12, at 2.

Id. ch. 12, at 3.

id. Kentucky's tax is tied to the selling price of coal and generated about $37 million in 1972. Ohio's severance tax is based on the tons of coal produced, thereby having a greater impact on lower priced coal than higher priced coal, but eliminating problems encountered in taxing captive coal production. The West Virginia Coal Association has firmly opposed a severance tax, while some economists have contended that the State business and occupation tax is, in effect, a severance tax based on the value of coal produced—similar to Kentucky's tax. See, e.g., Thompson, State and Local Taxation of the Bituminous Coal Industry, supra.
of the industry discussed above, i.e., labor relations, manpower training, environmental considerations, tax planning, coal marketing, research and development, and lobbying for West Virginia coal at the federal level, would also be coordinated by this agency.

The most distressing aspect of this study is that it lives up to its name all too well. It is, in fact, a study in how to help the West Virginia coal industry. Although State involvement in all of the areas mentioned may be justified by the benefits the industry will bestow on the State, those benefits were not spelled out with specificity. Aside from recommendation of "Operation Faceup"—a program aimed at the repair of coal industry associated environmental damage—no mention was made of alternative areas into which the increased revenues provided by a healthy coal industry can be funneled. No consideration was given to the eventuality of the depletion of the State's coal resources, nor was any consideration given to alternative bases for the West Virginia economy should coal once again sag to the depths of the 1950's and 1960's. While the present study is an important first step, West Virginia cannot truly be said to have a comprehensive policy towards the coal industry until those in policy-making positions realize that the bright future for coal can also mean a bright future for West Virginia when the coal is all gone—if proper steps are taken now to assure such a result. Absent such a realization, programs such as those suggested in the recently completed study may prove helpful only to the coal industry, with no comparable benefit to the State of West Virginia.


Coal Refuse Piles. Senate Bill 83 grants the Department of Natural Resources authority to reclaim abandoned coal refuse piles. Funding has not yet been determined, although the Senate Natural Resources Committee recommended $500,000 for the first year, which could be used to obtain as much as $1.5 million in federal matching funds.

Coal Research. Senate Bill 483 broadens the research author-

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31The Coal Refuse Disposal Control Act, W. Va. Code Ann. § 20-6C-1 et seq. (1973 Replacement Volume), grants the Director of the Department of Natural Resources authority to inspect coal refuse piles and associated water impoundments if they are found to constitute "imminent danger to human life."
ity of West Virginia University's Coal Research Bureau to include mining technology, conservation, and efficiency.

Miner Training and Certification. Senate Bill 503 creates a pre-employment and annual retraining program to be administered by the State Department of Mines. It provides for a program of eighty hours for trainees in underground mining, who are to receive a stipend from the State, and a program of forty hours for prospective employees in surface mining. The format of the program is to be established by a seven member board, comprised of appointees of the Governor, representing labor and industry. The board does not have the power of decertification, but before a miner can become certified he must serve a six month apprenticeship. The board and the Director of the Department of Mines can approve a coal operator's training program to be used in lieu of the State program.

Financial Assistance to the State's Coal Industry. House Bill 754 amends the West Virginia Industrial Development Bond Act to make industries involved in the extraction of mineral resources eligible for financial assistance.

Surface Mining. House Bill 795 requires a deep mine operator to obtain a surface mining permit if the surface is disturbed beyond four hundred feet from the mine entrances. This bill is intended to prevent operators from obtaining adjacent deep mining permits and then surface mining the property, thereby avoiding reclamation and bonding requirements.

\[\text{Note:} \text{References to West Virginia statutes and codes are from the years mentioned.}\]