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## W.Va. lawmakers tweaking environmental, safety regs to aid flailing coal sector

By Taylor Kuykendall

A new bill quickly moving through the West Virginia Legislature in hopes of giving the coal industry a break from its steady downturn has drawn skepticism from some in the state.

The Coal Jobs and Safety Act of 2015 has cleared the state's Senate and aims to make assorted changes to mine safety laws, prompting debate in a state that **consistently** has led the U.S. in coal mine fatalities. Many of the changes to the laws have been described by supporters as merely updating or conforming state law to national standards or adapting to new technology, but opponents of the bill have expressed concerns about weakening regulation.

The bill, a top legislative initiative of the West Virginia Coal Association, has been touted by the lawmakers behind it as a means to make West Virginia coal more competitive. **Central Appalachia**, part of which is in southern West Virginia, is particularly and increasingly **sensitive** to competition from natural gas and coal basins where production is cheaper.

Chris Hamilton, senior vice president of the West Virginia Coal Association, said that on their own, many of the provisions may not make a major dent in the economics of West Virginia's coal production versus lower-cost basins. However, cumulatively, the measures in the bill and other legislative efforts may have a chance at easing some of the burdens on the coal industry.

Hamilton said the headline benefit of the bill — saving coal jobs— came from an element of the original request by the trade group to repeal a 56-cent tax levied on each ton of coal.

"That's basically what led to the title of the bill being Coal Jobs and Safety Act," Hamilton told SNL Energy. "... The real savings was going to come from the elimination of the 56 cents a ton. ... You could assign a certain dollar figure to each of these provisions that are being updated, revised or eliminated, but I think it's the cumulative effect of all these changes that will make it noticeable on producing coal in West Virginia in a more efficient manner."

That tax provision of the bill was split off from the rest of the Coal Jobs and Safety Act, but is also working its way through the Legislature. Del. Randy Smith, R-Preston, a coal miner and assistant majority whip, is the lead sponsor of both the Coal Jobs and Safety Act and the tax repeal measure.

"Is it going to put 100 coal miners back to work? No," Smith said of the safety and jobs bill. "In the end is it going to save some jobs? Very possibly, because in this day and age contracts are won and lost by maybe a penny a ton or a nickel a ton."

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The 56-cent additional severance tax on each ton of coal was enacted to help the state pay down a deficit within its workers compensation program. Hamilton said the industry stepped up when the state needed it, but now the circumstances have changed **dramatically**.

"The coal industry has been paying on that for 10 years," Hamilton said. "... We've been paying that for basically everyone else to experience a better workers comp premium. Given the state of our industry, the fact that we're in a near collapse status today, we are asking the Legislature to remove that 56 cents per ton."

Hamilton said he expects that the same kind of support will be given to that tax provision as the industry has seen with the safety law. Smith was also optimistic about passage of the tax repeal.

"This was a bill to basically give the coal industry some breathing room because 56 cents a ton can definitely say whether a coal mine is going to stay open this year or they're going to close," Smith said. "... This does not go into the general fund. If we cut it, it won't affect the state budget at all."

Smith added that it would be unlikely lawmakers would be looking at repealing the remainder of the coal industry's severance tax burden due to the current state of West Virginia's budget.

Though many of the lawmakers supporting the law have touted the potential of the Coal Jobs and Safety Act to save coal jobs, others have been skeptical. State Sen. Jeff Kessler, D-Marshall, is the Senate minority leader. He characterized the bill as a potentially dangerous weakening of mine safety laws and warned that holding up the bill as a measure to save jobs gives those in the southern coalfields "a false sense of hope."

"The new Legislature is singing out of a choir book that I think was printed in the 1950s," Kessler said. "They keep saying 'we all love coal' and 'coal is West Virginia' and 'that's the only thing that's going to change our state.' ... I think Obama could resign tomorrow and the EPA could go away the next day and I still don't think you're going to see coal booming in McDowell or Mingo County in my lifetime."

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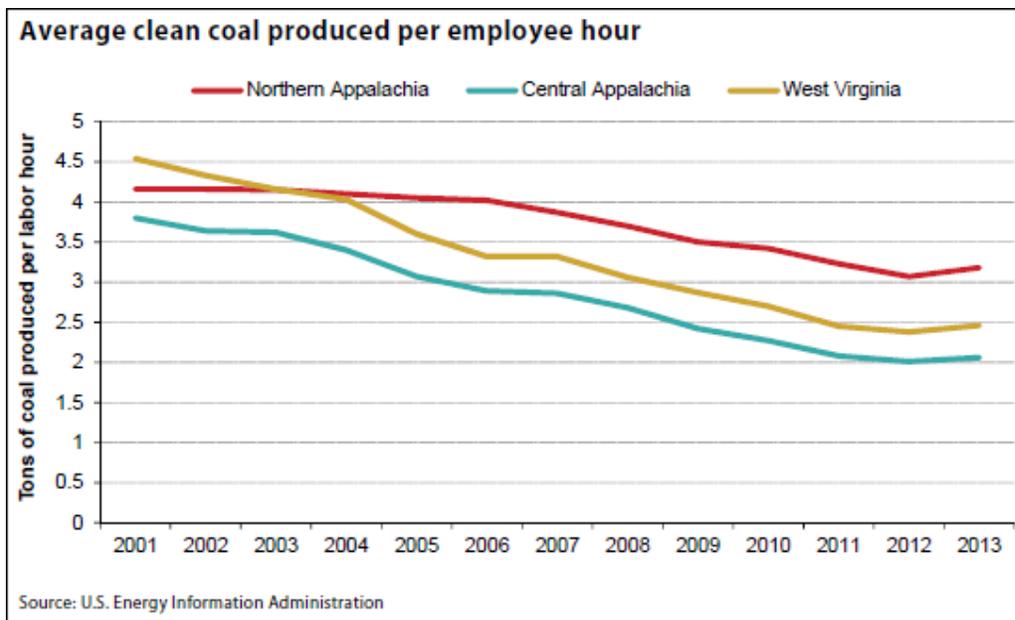
**— Chris Hamilton, senior vice president, West Virginia Coal Association**

### Southern West Virginia's cost-price problem

The challenge of weak coal prices in both thermal and metallurgical coal markets is a major issue for coal producers across the U.S. However, West Virginia and Kentucky's Central Appalachia coalfields have been particularly hard hit as a long history of mining is catching up to the limits of geology in the region. Regulatory constraints and natural gas competition compounds the issue.

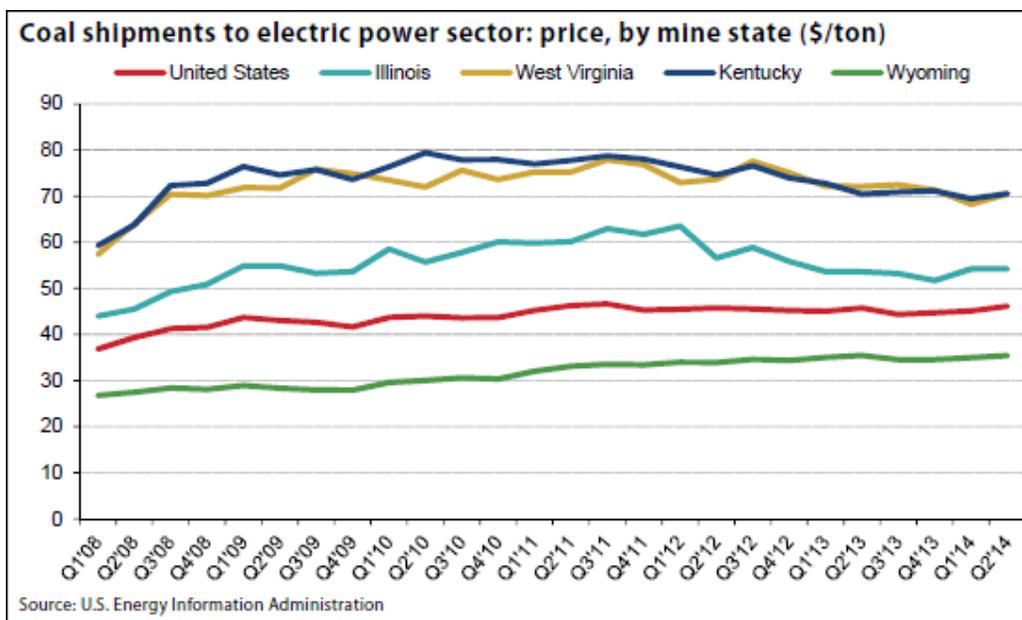
While regulatory actions such as the EPA's Clean Power Plan [threaten](#) to put a damper on coal demand, natural gas prices remain so depressed that many power generators find its low price difficult to resist. Low natural gas prices, several coal executives have [predicted](#), are not likely to reverse course in 2015.

The financials of coal companies that operate in multiple regions illustrates the fundamental problem facing southern West Virginia. [Alpha Natural Resources Inc.](#) reported in its recent earnings results that the average realized price per ton the



company sold from the Powder River Basin in the fourth quarter was \$12.02. On the other hand, its eastern steam coal was being sold for \$55.47.

While the price disparity between Powder River Basin coal and eastern basins such as Central Appalachia has been ongoing for years, the costs of mining have increasingly nibbled at the margins of Central Appalachia producers despite drastic cost-saving measures. Alpha reported its eastern segment's adjusted cost of coal sales per ton was \$57.55 in the recent quarter— about \$2.08 more than the average realized price. Meanwhile, the company's adjusted costs of coal sales per ton in the Powder River Basin averaged \$11.16.



Arch Coal Inc.'s financials paint a similar picture. In its earnings results, Arch reported that its Powder River segment earned an operating margin of 54 cents per ton in the recent quarter. Arch's operating margin in its Appalachia segment was a loss of \$4.21 per ton.

Ted Boettner, executive director of the West Virginia Center on Budget and Policy, told SNL Energy that without a dramatic reversal of the decadelong trend of declining productivity in the coal industry, utilities are not likely to make a shift toward purchasing West Virginia coal.

"There is no evidence so far that suggests that these regulatory changes will reduce the price of West Virginia coal enough to make it more competitive," Boettner said. "If more coal miners are injured as a result of the legislation, it could lead to decreases instead of increases in productivity."

**Bill stirs safety concerns**

With the newly elected and business-friendly GOP now wielding control of the West Virginia House and Senate, the Coal Jobs and Safety Act is having little trouble moving through the legislative process. However, one of its vocal detractors is Cecil Roberts, the president of the United Mine Workers of America.

"This legislation is touted by its supporters as making West Virginia coal 'more competitive' with coal produced in other states," Roberts said in a statement. "That's bull. This is about taking money out of the most advanced state safety and health requirements in America and putting it in the pockets of coal operators."

Smith said the concerns are more political than legitimate safety issues.

"They come out against everything — they do," Smith said of the UMWA. "Mainly because I'm a Republican. Any coal bill I put out, they come out against."

Hamilton agreed the bill is not weakening safety standards.

"The whole bill is aimed toward compelling our Legislature to take a hard look at the body of law that governs our mining operations to see if there's conflicting provisions with federal law, provisions that generally need updated and revised," Hamilton said.

He pointed to one provision that changes a procedure for issuing temporary decertifications in the case of miner drug testing that is currently different for union versus nonunion workers to make the process the same. Hamilton said the industry has had issues when a union miner has tested positive for drug or alcohol, but is sent back to work by an arbitrator through the union's grievance process.

"He just goes back to work," Hamilton said.

The bill also eliminates a commission that is dedicated to approving diesel equipment in underground mines. Hamilton said the current process is a "huge bureaucracy" that was created back before diesel equipment underground became more commonplace. He said the state's mine safety office, with 130 employees, has the resources to take over those duties.

"We have the most stringent diesel requirements anywhere in the world in West Virginia and this law does not change this one iota," Hamilton said.

Hamilton said that at one point, the commission stalled for months because a member was in an accident that prevented the group from establishing a quorum.

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"We literally had millions of dollars of equipment that was previously approved by both the state and [U.S. Mine Safety and Health Administration] for use in underground mines just sitting around on the surface waiting for this group to meet to simply approve it," Hamilton said. "That's just unacceptable."

Kessler complained that the bill aimed to loosen restrictions on where workers can be during equipment moves in underground mines.

"West Virginia has got probably the most strict and stringent safety standards when it comes to that and we're relaxing those standards to the federal standard," Kessler said. " ... For the love of god I have no reason why we wouldn't have the strictest mine safety rules in the nation rather than being in the middle of the pack."

Smith said the requirements in current law are inconsistent and the revisions proposed in the bill means better productivity for employers and possibly more work hours for coal miners.

"If you're going to shut down your longwall because you're moving a piece of equipment, yeah, you're going to shut down production and it's going to cost, not only the company, but it's going to cost your miners money because they're not working," Smith said, noting that coal miners he has worked with do not like the regulation on the books.

Hamilton said the provision is outdated, and while intended to only apply to the few mines that use trolley wire, the law has been interpreted to apply to all mines. Smith said that in the state, only about nine mines continue to use a trolley wire, a method of delivering electrical power to underground equipment. He said the proposed bill even keeps provisions from the original law, which was written in response to a specific mine disaster in West Virginia, that would take precaution in mines with trolley wires.

Sam Petsonk, a mine safety lawyer with the nonprofit Mountain State Justice law firm, said he has heard concerns from both union and non-union miners who worry about a provision of the bill that would allow sideboards to be added to shuttle cars if a camera is also equipped on the shuttle car. In addition to obstructing the miners' vision, he said some have found the use of the screen in the dark environment to cause further problems.

"Sideboards are add-ons to a shuttle car that raise the height of the sides of the car so that it can transport more coal," Petsonk told SNL Energy. "This is all about maximizing production. Miners will have essentially no way to see across to the other side of the shuttle car. People get run over this way, losing legs and dying."

Petsonk pointed to the recent July 2010 death of a coal miner in Greenbrier County, W.Va., that MSHA determined was due to sideboards installed on a shuttle car that limited the field of vision of the miner. According to the MSHA fatality investigation report, the cause of the accident was that the sideboard "severely limited the field of vision of the shuttle car operator."

While the bill's summary says the legislation will permit shuttle cars to be operated with sideboards if cameras are equipped on the shuttle car, the text of the Senate's version of the bill also allows "shuttle cars with sideboards as manufactured by an equipment manufacturer" to be permitted without the addition of cameras.

"The notion that after adding the cameras you can obstruct the shuttle car operators' range of vision is illogical to say the least," Petsonk told SNL Energy. "It should be intuitive; driving by a camera is no replacement for using your eyes and your senses to look farther down the section."

Smith said the union was on board with the sideboard provision and he has not heard much opposition to that proposal. He said the cameras in use are so high quality "you can read people's names on their uniforms when they walk by" and that the cameras work well underground.

"It's not your old fuzzy security cameras," Smith said.

## **Environmentalists: Coal 'a little more giddy than usual'**

In addition to the safety concerns, the bill also takes aim at a number of environmental obstacles that have challenged the industry. The bill seeks to give coal operators protection against citizen lawsuits, a tactic that has proven  detrimental to the industry of late, and would also increase the pollution limit on aluminum.

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**— Jim Kotcon, Sierra Club**

"Because the [West Virginia Department of Environmental Protection] has effectively given coal companies a free pass to pollute, citizen groups have had to step up and hold these chronic polluters accountable," said Vernon Haltom, executive director of Coal River Mountain Watch. "This legislation aims to remove what little recourse we have and let coal companies use the waters of West Virginia as their unregulated waste dumps. ... Coal companies have always gotten their way in the West Virginia Legislature. This is no different, except perhaps that they seem a little more giddy than usual."

Jim Kotcon, chairman of the energy committee for the West Virginia chapter of the Sierra Club, said the Legislature is attempting to create a permit shield that would

punish violations of the Clean Water Act, with a cap of \$125,000, regardless of number of the violations. Lawsuits against coal companies over similar violations have netted millions.

"Overall, these penalties are so low that they fail to provide any deterrent to water pollution," Kotcon told SNL Energy. "It is far easier for a scofflaw coal company to ignore permit requirements and simply pay a 'civil administrative penalty' as a cost of doing business. Those citizens who are downstream are the ones who then pay for the failure of the coal company to clean up and follow the law."

Kotcon said environmentalists have proven time and again that the industry is discharging toxic metals such as aluminum and selenium into West Virginia waters. He said that without the ability for citizens to bring lawsuits against the companies, "communities will be helpless" against the coal industry.

"No other industry gets to avoid water quality standards," Kotcon said. "It appears as if some West Virginia legislators are so desperate to help the coal industry that common sense, decency and respect for the law have flown out the window. ... If coal companies want to avoid lawsuits and penalties, all they have to do is obey the law."