WOULD YOU LIKE FRIES WITH THAT? STAYING "OPEN FOR BUSINESS" IN A TOURISM-BASED, POST-COAL ECONOMY

I. INTRODUCTION

In a state beset by the twin challenges of environmental degradation[1] and narrowing economic activity,[2] tourism is seen in West Virginia as a balm compared to other more destructive or less effective means of generating economic activity.[3] Paraphrasing one of tourism's own maxims, tourism takes little from the environment, and leaves nothing behind but dollars. A more nuanced and longer-term "sustainability" analysis, analysis that goes beyond rudimentary economic impacts, often exhibits a similar embrace of tourism's efficacy: the environment is minimally harmed, the economy is unequivocally given a jolt, and social equity is upheld as dollars create productive jobs in a non-exploitative industry.[4] In short, there is something for everyone in tourism.

West Virginia in particular evinces this optimistic view of tourism,[5] and understandably so: the State is entering a post-coal economy, with coal production set to decline precipitously by an alarming 30% by the end of this decade.[6] Moreover, the much-heralded shale gas employment boom remains unquantified in terms of actual employment effects within the State.[7] Having

1 *See, e.g.*, *Air Pollution Linked to Cardiovascular Disease, WVU Researcher Says*, WV PUB. BROAD. (May 01, 2006), *available at* http://www.hsc.wvu.edu/som/media/audio/0501wrm3.mp3.

2 *See generally* BUREAU OF BUS. & ECON. RESEARCH, W. VA. UNIV. COLL. OF BUS. & ECON., WEST VIRGINIA ECONOMIC OUTLOOK 2013 1 (2012), *available at* http://www.wvpbmedia.com/news/2013/WV_Economic_Outlook_2013.pdf.

3 *See, e.g.*, George Hohmann, *Study Outlines Tourism Potential*, CHARLESTON DAILY MAIL, Dec. 6, 2012, at B1, *available at* http://www.charlestondailymail.com/Business/201212050276.

4 *See, e.g.*, Audrey Kelm, *Ecotourism: Calling a Truce Between Ski Resort Developers and Environmental Groups*, 21 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 339, 340–41 (2008).

5 *See* Timothy Forsyth, *Environmental Responsibility and Business Regulation: The Case of Sustainable Tourism*, 163 GEOGRAPHICAL J. 270 (1997).

6 *See* ERIC BOWEN ET AL., W. VA. UNIV. COLL. OF BUS. & ECON., FOSSIL ENERGY OPPORTUNITIES FOR WEST VIRGINIA 23 (2012), *available at* http://www.wvcommerce.org/App_Media/assets/doc/energy/EOD_Recommendations-_Fossil_Energy.pdf.

7 *See* Ken Ward, Jr., *Gas Worker Residency Data Missing From Tomblin Report*, CHARLESTON GAZETTE (Oct. 27, 2013), http://www.wvgazette.com/News/201310270086.

been primarily reliant upon the extractive industries for well over a century,[8] tourism offers West Virginians more benign employment opportunities and relief from mining's heavier environmental toll.[9] After decades of a relatively anemic monoeconomy, one that shows very few signs of trending upward,[10] there is a comparative cheerfulness in the promise of tourism that all stakeholders embrace: the environmentalist decrying the abuses of extraction;[11] the coal industry that extols how much beauty has been restored or left undisturbed in the State;[12] the lawmaker who conveys that he or she is "doing something" to generate economic activity;[13] and of course the average citizen who can find nothing wrong about a sector that brings dollars into the State and creates jobs. And all these benefits accrue while helping other Americans enjoy activities in the picturesque "Wild and Wonderful" Mountain State.

True sustainability is not so simple, however, and the panacea of tourism in West Virginia might not necessarily survive a rigorous sustainability analysis.[14] Certainly, tourism is largely perceived to meet the environmental requirement of sustainability, in terms of its ecological impact, particularly when compared to polluting activities.[15] However, the economic and social equity requirements to achieve true sustainability require a more nuanced analysis, particularly when taking into account the longer, multi-generational time-frame that true sustainability analysis requires.[16]

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[8] *See* Otis K. Rice & Stephen W. Brown, *History of West Virginia*, W. VA. ENCYCLOPEDIA (Apr. 6, 2011), http://www.wvencyclopedia.org/articles/414.

[9] *See* Sandra Zellmer, *Treading Water While Congress Ignores the Nation's Environment*, 88 NOTRE DAME L. REV. 2323, 2361 (2013).

[10] *See generally* BOWEN ET AL., *supra* note 6.

[11] *See, e.g.*, *Protecting West Virginia's Wilderness is Important to West Virginia's Economy*, MOUNTAIN STATE SIERRAN (Sept. 2005), http://westvirginia.sierraclub.org/newsletter/archives/2005/09/a_005.html.

[12] *See, e.g.*, Chris Hamilton, *Restoration and Post-Mine Land Use*, W. VA. COAL ASS'N, http://www.wvcoal.com/Post-Mine-Land-Use/restoration-and-post-mine-land-use.html (last visited Mar. 14, 2014).

[13] *See, e.g.*, Press Release, W. Va. Div. of Tourism, Manchin Proclaims West Virginia Tourism Week (Apr. 30, 2008), *available at* http://www.wv.gov/news/tourism/Pages/TourismHasSignificantEconomicImpactNationallyAndLocallyManchinProclaimsWestVirginiaTourismWeek.aspx.

[14] *See, e.g.*, Celso Garcia & Jaume Servera, *Impacts of Tourism Development on Water Demand and Beach Degradation on the Island of Mallorca (Spain)*, 85 PHYSICAL GEOGRAPHY 287, 287 (2003), *available at* http://onlinelibrary.wiley.com/doi/10.1111/j.0435-3676.2003.00206.x/abstract.

[15] *See* ENCHO PLAMENOV STOYANOV, SUSTAINABLE TOURISM IN REYKJAVIK 29 (2012), *available at* http://skemman.is/stream/get/1946/10766/26684/1/Encho__BS_ritger%C3%B0.pdf.

[16] John C. Dernbach, *Creating the Law of Environmentally Sustainable Economic Development*, 28 PACE ENVTL. L. REV. 614, 623 (2011).

While the limited nature of this Note precludes a definitive analysis, an examination of the economics of the tourism industry, particularly when accounting for the limited job and wage quality that tourism creates, indicates a note of caution should be heeded in the face of a headlong governmental pursuit and subsidy of the tourism sector. West Virginia's employment trends suggest that tourism's emphasis on low-wage service jobs has potentially negative ramifications, wherein a relatively uneducated workforce trades higher paying, but rapidly dwindling manufacturing jobs for lower paying service jobs. This Note will thus begin to analyze whether or not an expanded tourism sector has a net positive impact on the State in ways that go beyond a simple influx of money and increased employment rolls. The Note will also examine whether tourism jobs themselves are beneficial for the State over the long term, and whether the money the State invests in tourism subsidy could be more wisely spent on other investments in the public.

In short, this Note argues that West Virginia should more carefully analyze the impact of tourism on the State job market in order to identify a better-rounded and more sustainable economy. A narrow focus solely on the dollars generated by tourism might not address the long-term economic reality now facing West Virginians: in the absence of increased funding in higher education or skilled jobs training, the poorer and less-educated appear destined to fill the increasing number of unskilled and low-paying jobs of tourism's service sector. This lack of education or training precludes those workers' movement into, and creation of, the higher paying jobs associated with higher education and skills training.

While far from comprehensive, the application of this "sustainable development" hypothesis indicates that more study into the long-term effects of tourism investment in West Virginia is required, going beyond merely counting up short-term, dollar-by-dollar additions into the economy. Such additional inquiries should include qualitative sustainability analyses, ones that take into account the *type* of jobs being generated, in addition to the existing quantitative approach that merely counts them, irrespective of their quality or wage-growth potential. Indeed, as an entirely new field of metrics, such a sustainability approach would very likely be the first of its kind in West Virginia.

This Note begins with a background on how the economic benefits of tourism are typically assessed across the United States (Part II). That background Part then summarizes the larger concept of sustainability and how it can be applied to the economy of West Virginia. Then, the Note analyzes West Virginia's specific laws and subsidies relating to tourism, with an examination of relevant case law as well. Next, Part III provides an illustrative discussion of whether this statutory subsidy of tourism has in fact been proven to have long-term economic merit, and analyzes the larger employment trends in West Virginia as they relate to an increase in tourism jobs.

Based on that analysis, the Note posits recommendations in Part IV for tourism's proper place in the State economy, viewed through the prism of sustainability, and accompanied by specific statutory, judicial, and policy recommendations. These recommendations are followed by suggestions for further study, as well as a substantial caveat on the inherently limited scope of this Note. In the absence of a fuller and more comprehensive sustainability analysis, that is, an evaluation of the *true* long-term value of tourism in West Virginia's emerging post-coal economy will remain unknown.

II. BACKGROUND

A. Background on the Prevailing National Approach to Assessing the Benefits of Tourism

Tourism is not only heralded as an unequivocal economic boon in West Virginia. The conventional wisdom of economic development across the United States suggests that it is a well-settled assumption that tourism should be examined primarily, if not exclusively, by the immediate economic benefits that it provides.[17] Based on that narrow perspective, most economic-impact reports understandably present tourism as an economic panacea; the brief survey below of the vast number of tourism impact studies confirms this.

While there are certainly quantitative studies that call into question this status quo of unalloyed economic benefits of tourism,[18] as well as studies that diligently weigh the burdens and the benefits,[19] by and large tourism literature is striking in its narrow consideration of only quantifiable economic outputs. While that fact alone does not, of itself, call into question the validity of those studies, without a more circumspect view of either the overall *nature* of those economic impacts or of other indicators in the environmental and social equity arenas, it is possible that the evaluation of tourism as sustainable development remains incomplete.

Nearly every form or sector of tourism has a complementary raft of studies that serve to unambiguously affirm that tourism sector's categorically positive economic impact. More often than not, a survey of any given number of these studies reveals that the impact studies rarely look beyond those economic inputs to the broader social or environmental context.[20] This quantitative focus of tourism economics, usually without any further contextual or qualitative analysis of externalized effects, is most often comprised of

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17 *See, e.g.*, Press Release, U. S. Dep't of Commerce, Commerce Secretary Gary Locke Highlights Importance of Tourism to U.S. Economy in Orlando (May 3, 2010), *available at* http://www.commerce.gov/news/press-releases/2010/05/03/commerce-secretary-gary-locke-highlights-importance-tourism-us-econom.

18 *See, e.g.*, *infra* note 42.

19 *See, e.g.*, *infra* note 43.

20 *See, e.g.*, *infra* notes 22–35.

IMPLAN-type[21] input/output models, usually with additional layers of economic multiplier effects.[22] While a case-by-case assessment of these individual studies is beyond the scope of this research, the survey below of the content and methods of most tourism studies reveals a body of literature that solely undertakes an economic assessment of dollars added into the economy.

An assessment of the literature of any given tourism sector reveals this narrow economic focus. The array of literature on bicycle-related tourism, to cite just one example, is typical in its economic focus and in its use of the phrase "economic impacts" as the primary statement of purpose.[23] Despite the increased environmental burden of Off Road Vehicles (ORV), "economic impacts" are nonetheless generally the sole criterion in ORV tourism studies as well.[24] In sum, nearly any given sector of tourism has associated impact studies that consist solely of the *economic* impact of that activity.[25]

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21 IMPLAN is an acronym for "Impact Analysis for Planning," and this computing method for measuring economic impacts is commonly used to estimate the direct, indirect, and induced effects by entering economic inputs, outputs, and multiplier effects. *See generally* IMPLAN, www.implan.com (last visited Mar. 14, 2014).

22 *See* DEP'T OF CMTY. DEV. & APPLIED ECON., UNIV. OF VT., IMPLAN METHODOLOGY STUDY OF THE IMPACT OF TOURISM ON THE VERMONT ECONOMY 1, 6–7 (2009), *available at* http://wuvm.edu/~snrvtdc/publications/implan_method.pdf; CHRISTOPHER PIKE, GUAM TOURISM ECONOMIC IMPACT 3 (2007), *available at* doleta.gov/programs/2006reportsandplans/economic_analysis_reports/gu-4.pdf; David Harpman, *Estimating Recreation Employment Effects with IMPLAN for the Glen Canyon Dam Region.* 44 J. ENVTL. MGMT. 233, 233–47 (1995).

23 *See, e.g.*, MIAMI-DADE CNTY. PARK & RECREATION DEP'T, MIAMI-DADE TRAIL BENEFITS STUDY: LUDLAM COUNTY CASE STUDY 2 (2011), *available at* atfiles.org/files/pdf/Miami-Dade-Ludlam-Trail-Benefits.pdf; PKF CONSULTING, ANALYSIS OF ECONOMIC IMPACTS OF THE NORTHERN CENTRAL RAIL TRAIL (1994), *available at* ntl.bts.gov/DOCS/430.html; TRACY PRESNELL, ANALYSIS OF THE ECONOMIC BENEFITS OF THE PRAIRIE SPIRIT RAIL-TRAIL IN ANDERSON, FRANKLIN AND ALLEN COUNTIES OF KANSAS 1 (2000), *available at* atfiles.org/files/pdf/EconPrairieRT.pdf; CTR. FOR RESEARCH IN ECON. & SOC. POLICY, THE ECONOMIC IMPACT OF BICYCLING IN COLORADO 1 (1999), *available at* atfiles.org/files/pdf/CObikeEcon.pdf.

24 *See, e.g.*, INTERACTIVE MKT. SOLUTIONS, HERITAGE RAIL TRAIL COUNTY PARK 2001 USER SURVEY AND ECONOMIC IMPACT ANALYSIS 30–32 (2002), *available at* atfiles.org/files/pdf/YorkEcon.pdf; CTR. FOR BUS. & ECON. RESEARCH, MARSHALL UNIV., THE ECONOMIC IMPACT OF THE HATFIELD~MCCOY TRAIL SYSTEM IN WEST VIRGINIA 1 (2006), *available at* https://www.trailsheaven.com/shared/content/pdfs/Hatfield%20McCoy%20Study%2010-06%20final%20for%20printing.pdf; Alan Hodges et al., *Economic Impacts and Motivations of Off highway Vehicle Recreationists: A Case Study from Florida*, AMERICAN TRAILS, atfiles.org/files/pdf/Florida-OHV-Economic-Impact.pdf (last visited Feb. 23, 2014).

25 *See also* NYS OFFICE OF PARKS, RECREATION & HISTORIC PRES., EVERY MILE COUNTS: AN ANALYSIS OF THE 2008 TRAIL USER SURVEYS 3 (2010), *available at* atfiles.org/files/pdf/NY-Trail-Survey-Economics2008.pdf; Paul McHugh, *Forest Recreation's Growing Impact*, AMERICAN TRAILS, americantrails.org/resources/economics/EconForestRec.html (last updated Aug. 17, 2011); PFLUM, KLAUSMIER & GEHRUM CONSULTANTS, LITTLE MIAMI SCENIC TRAIL ECONOMIC

As a largely rural state, West Virginia is similarly situated with other rural states that have limited means of expanding their economies. Perhaps because of that perceived dearth of economic options, here too studies of tourism in rural areas almost exclusively study and quantify the economic inputs of tourism, which are usually described in terms of "benefits" or "impacts."[26] Often these rural areas, including West Virginia, are marked by extensive state or national parklands. The tourism analysis of parkland impacts is also largely focused on the "economic benefits" of these parklands.[27]

As is often the case with parks systems, national and state governments also provide their own tourism studies, which also generally focus on tourism strictly through the lens of economic inputs.[28] This exclusively economic focus

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STUDY 2 (1999), *available at* americantrails.org/resources/economics/#2; J.M. BOWKER ET AL., THE WATERWAY AT NEW RIVER STATE PARK: AN ASSESSMENT OF USER DEMOGRAPHICS, PREFERENCES, AND ECONOMICS 3 (2004), *available at* atfiles.org/files/pdf/WNRstudy04.pdf; B.H. Archer, *The Importance of Tourism for the Economy of Bermuda*, 22 ANNALS OF TOURISM RES. 918, 918–30 (2005); B. Archer & J. Fletcher, *The Economic Impact of Tourism in the Seychelles*, 23 ANNALS OF TOURISM RES. 32, 32–47 (1996); D.B ENGLISH ET AL., ECONOMIC CONTRIBUTION OF RECREATING VISITORS TO THE FLORIDA KEYS/KEY WEST 1 (2006), *available at* http://coastalsocioeconomics.noaa.gov/core/socmonfk/publications/96-26.pdf.

26 *See* M.R. BOTKIN ET AL., ILLINOIS INSTITUTE FOR RURAL AFFAIRS, ECONOMIC IMPACTS AND EFFECTS OF TYPES OF TRAVEL AND TOURISM ATTRACTIONS IN RURAL ILLINOIS (1990); DENNIS M. BROWN, ECON. RESEARCH SERV., RURAL TOURISM: AN ANNOTATED BIBLIOGRAPHY (2013) (citing Fern Willits, *The Rural Mystique and Tourism Development: Data from Pennsylvania*, 24 J. COMMUNITY DEV. SOC'Y 159, 159–74 (1993); Michael Jones, *Rural Tourism: Special Marketing for a Special Place*, 14 RURAL DEV. NEWS 4, 4–5 (2000); M. Bowling, *Illinois Rural Tourism: Do Rural Areas Benefit from Increases in Travel Expenditures*, 22 SMALL TOWN 19, 19–26 (1992); Paul B. Siegal, et al., *Planned Retirement and Recreation Communities Are Among Development Strategies Open to Amenity-Rich Rural Areas*, 10 RURAL DEV. PERSP. 8, 8–14 (1995)), *available at* http://www.nal.usda.gov/ric/ricpubs/rural_tourism.html; Douglas C. Purcell, *Heritage Tourism Is in the Future of Many Alabama Communities*, 2 RESOURCE DEV. REP. ALA. COOPERATIVE EXTENSION SERVICE, no. 3, at 1 (1991).

27 *See, e.g.*, Scott A. Dawson et al., *Expected and Actual Regional Economic Impacts of Great Basin National Park*, 11 J. PARK & RECREATION ADMIN. 45, 45–57 (1993); *see also* Harpman, *supra* note 22; Kevin T. Duffy-Deno, *The Effect of State Parks on the County Economies of the West*, 29 J. LEISURE RES. 201, 201–24 (1997); Thomas R. Harris et al., *An Analysis of Visitation Potential and Corresponding Economic Impacts of the Great Basin National Park*, 27 J. COMMUNITY DEV. SOC'Y 248, 248–60 (1996).

28 *See, e.g.*, NYS OFFICE OF PARKS, *supra* note 25; *see also* BOWKER ET AL., supra note 25; JERRY LEONARD, U.S. FISH & WILDLIFE SERV., WILDLIFE WATCHING IN THE U.S.: THE ECONOMIC IMPACTS ON NATIONAL AND STATE ECONOMIES IN 2006, at 3 (2008), *available at* atfiles.org/files/pdf/wildeconsurvey.pdf; R. SCOTT JACKSON ET AL., AN ASSESSMENT OF THE NATIONAL ECONOMIC EFFECTS OF THE U.S. ARMY CORPS OF ENGINEERS RECREATION PROGRAM 1 (1994), *available at* http://el.erdc.usace.army.mil/elpubs/pdf/mpr94-2.pdf; *see generally* NAT'L PARK SERV., ECONOMIC IMPACTS OF PROTECTING RIVERS, TRAILS, AND GREENWAY CORRIDORS—A RESOURCE BOOK III (4th ed. 1995), *available at* www.nps.gov/pwro/rtca/econ_all.pdf; Glenn Weaver, *Tourism Development: A Potential for Economic Growth*, *in* NEW DIMENSIONS IN RURAL POLICY: BUILDING UPON OUR HERITAGE 440, 440–44 (1986).

is true as well for the reports generated by, or for, West Virginia's own Development Office.[29]

Another segment of tourism focuses on the particular cultural heritage of an area (and hence is often called "heritage" or "cultural" tourism). Despite the cultural and social emphasis of this form of tourism, the wide body of studies of heritage tourism also evinces a primary focus on economic inputs.[30] Of particular relevance to West Virginia's own heritage, there are a few tourism impact studies that focus on mining towns. Here too, these studies center on the economic revenue that can be gained from developing mining-based tourism.[31]

Similar to the place-based focus of heritage tourism, "eco-tourism" also stresses the unique characteristics of a specific place or region; in West Virginia's case, the environmental or natural qualities serve as a destination unto themselves.[32] While the environmental impact of travelling to places that often rely on their "unspoiled" qualities, most (though not all, as discussed *infra* page 11, this section) eco-tourism impact studies eschew an environmental impact focus. Instead, eco-tourism studies generally opt for a

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29 *See, e.g.*, DEAN RUNYAN ASSOCS., ECONOMIC IMPACT OF TRAVEL ON WEST VIRGINIA 1 (2010), *available at* wvcommerce.org/App_Media/assets/doc/travelandrec/industry/marketing/2010%20Economic%20Impact.pdf; GUERILLAECONOMICS, LLC, THE ECONOMIC IMPACT OF MOTORCOACH TOURISM IN WEST VIRGINIA 4 (2007), *available at* www.wvcommerce.org/App_Media/assets/pdf/industryinformation/reports/2006_WV_Motorcoach_Economic_Impact.pdf; LONGWOODS TRAVEL USA, WEST VIRGINIA 2011 OVERNIGHT VISITOR FINAL REPORT (2012), *available at* http://www.wvcommerce.org/App_Media/assets/doc/travelandrec/industry/reports/Wes-Virginia-2011-Overnight-Visitor-Report-Final.pdf.

30 *See, e.g.*, Shelagh J. Squire, *Literary Tourism and Sustainable Tourism: Promoting 'Anne of Green Gables' in Prince Edward Island*, 4 J. SUSTAINABLE TOURISM 119, 119–34 (1996); PRISCILLA BAKER, TOURING HISTORIC PLACES: A MANUAL FOR GROUP TOUR OPERATORS AND MANAGERS OF HISTORIC AND CULTURAL ATTRACTIONS (1995); Fred Baldwin, *Once Upon a Time, Happily Ever After*, 27 APPALACHIA 38, 38–44 (1994); DENNIS M. BROWN, ECON. RESEARCH SERV., RURAL TOURISM: AN ANNOTATED BIBLIOGRAPHY (2013) (citing Dane, Suzanne, and Amy Jordan Webb. 2001a. *Share Your Heritage: Cultural Heritage Tourism Success Stories*. Washington, DC: National Trust for Historic Preservation.

31 *See, e.g.*, J. Arwell Edwards & Joan Carles Llures i Coit, *Mines and Quarries: Industrial Heritage Tourism*, 23 ANNALS TOURISM RES. 341, 341–43 (1996); Katherine Jensen & Audie Blevins, *Lead, South Dakota: The Remaking of a Company Mining Town*, 22 SMALL TOWN 4, 4–11 (1992).

32 *See, e.g.*, Christina Talcott, *In West Virginia, Eco-Tourism Is Becoming Second Nature*, WASH. POST (Aug. 26, 2005), http://www.washingtonpost.com/wp-dyn/content/article/2005/08/25/AR2005082500706.html.

focus on quantifying the positive direct economic impacts of this tourism sector.[33]

Tourism studies that do not focus on a specific geographic area also usually have an economic focus.[34] When impact studies go beyond the direct economic inputs of tourism, very often those studies focus on some *indirect* economic benefit. One large category of these studies is the body of impact reports that detail the positive impact tourism has on surrounding property values (a focus that usually results in a corollary focus on the additional tax revenue benefits).[35]

It is beyond the scope of this research to quantify what precise proportion of tourism impact studies focus exclusively on positive economic impacts. However, even a cursory view of the available literature—both those indicated above and the vast number of studies that cannot be captured here—suggest that the vast majority of tourism metrics has as its primary focus the positive economic impacts tourism has provided in any given area. Given the often identical titles and statements of purposes of "economic benefits" seen in most of the studies indicated above,[36] those positive economic effects seem to be the predetermined purpose of most studies as well.

Clearly, however, the economy is not the only aspect of any given area that will be affected by tourism development.[37] It is important, then, to note

33 *See* McHugh, *supra* note 25; *see also* LEONARD, *supra* note 28, at 3; E. Jane Luzar et al., *Evaluating Nature-Based Tourism Using the New Environmental Paradigm*, 27 J. AGRIC. & APPLIED ECON. 544, 544–55 (1995); Lynda McDaniel, *Ecotourism Takes Off in the Heart of Appalachia*, 34 APPALACHIA 16, 16–21 (2001).

34 *See* Bradley M. Braun, *The Economic Contribution of Conventions*, 30 J. TRAVEL RES. 32, 32–37 (1992) (focusing on the local economic benefits of conventions and convention centers); J.C. Bergstrom et al., *Economic Impacts of Recreational and Retail Spending on Rural Areas: A Case Study*, 4 ECON. DEV. Q. 29, 29–39 (1990) (focusing on the economic impacts of retails sales in in rural areas); R.L. Johnson et al., *The Economic Impact of Tourism Sales*, 21 J. LEISURE RES. 140, 140–54 (1989) (focusing on the economic impacts of retail sales).

35 *See* THE EFFECT OF GREENWAYS ON PROPERTY VALUES AND PUBLIC SAFETY 1 (1995), *available at* https://www.broward.org/Greenways/Documents/coloradostudy.pdf; Soren T. Anderson & Sarah. E. West, *Open Space, Residential Property Values, and Spatial Context*, 36 REGIONAL SCI. & URB. ECON. 773, 773–89 (2006); H.S. Campbell & D. K. Munroe, *Greenways and Greenbacks: the Impact of the Catawba Regional Trail on Property Values in Charlotte, North Carolina*, 47 S. E. GEOGRAPHER 118, 118–37 (2007); P. Cheshire & S. Sheppard, *On the Prices of Land and the Value of Amenities*, 62 ECONOMICA 247, 247–67 (1995); J.L. Crompton, *Perceptions of How the Presence of Greenway Trails Affects the Value of Proximate Properties*, 19 J. PARK & RECREATION ADMIN. 114, 114–32 (2001); J.L. Crompton, *The Impact of Parks on Property Values: Empirical Evidence from the Past Two Decades in the United States*, 10 MANAGING LEISURE 203, 203–18 (2005); Jacqueline Geoghegan, *The Value of Open Spaces in Residential Land Use*, 19 LAND USE POL'Y 91, 91–98 (2002); Charles Herrick, *The Effect of Parks Upon Land and Real Estate Values*, 10 PLANNERS' J. 89, 89–94 (1939).

36 *See, e.g.*, *supra* notes 22–35.

37 *See generally* Forsyth, *supra* note 5.

that, occasionally, tourism studies do take into account other possible impacts of tourism. Sometimes, these studies measure positive impacts that are non-economic in nature, such as the social benefits a community might experience.[38]

More often, however, tourism studies that go beyond positive economic inputs quantify, or at least anticipate, either the negative economic impacts or some other externalized burden on either social or environmental health. The aforementioned property value studies, for example, are balanced by a few studies that indicate the possibility of lowered property values.[39] Many tourism studies outline the typical economic benefits while also adding notes of caution about possible burdens that might come with those benefits.[40] In particular, the potential for overdevelopment of areas popular among tourists is a common topic.[41] Other positive economic reports also note that there may be negative social impacts to anticipate.[42]

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38 *See* DENNIS M. BROWN, ECON. RESEARCH SERV., RURAL TOURISM: AN ANNOTATED BIBLIOGRAPHY (2013) (citing Claudia Jurowski, *Tourism Means More than Money to the Host Community*, 31 PARKS & RECREATION 110, 110–118 (1996)), *available at* atfiles.org/files/pdf/wildeconsurvey.pdf.

39 *See, e.g.*, P.K. Asabere et al., *The Adverse Impacts of Local Historic Designation: The Case of Small Apartment Buildings in Philadelphia*, 8 J. REAL EST. FIN. & ECON. 225, 225–34 (1994); P.K Asabere & F. E. Huffman, *Negative and Positive Impacts of Golf Course Proximity on Home Prices*, 64 APPRAISAL J. 351, 352–55 (1996); K.J. Krizek, *Two Approaches to Valuing Some Bicycle Facilities' Presumed Benefits*, 72 J. AM. PLANNING ASS'N. 309, 309–20 (2006).

40 *See, e.g.*, JULIE LEONES & DOUGLAS DUNN, STRATEGIES FOR MONITORING TOURISM IN YOUR COMMUNITY'S ECONOMY 19 (1999), *available at* http://ag.arizona.edu/arec/pubs/strategiesmonitoringtourism.pdf; Gary R. Hovinen, *Lancaster County, Pennsylvania's Heritage Tourism Initiative: A Preliminary Assessment*, 27 SMALL TOWN 4, 4–11 (1997); Rebecca Bryant, *Conservation, Community, and Rural Economic Development*, 86 NAT'L CIVIC REV. 181, 181–87 (1997); *see generally* Dimitrios Diamantis, *The Development of Ecotourism and the Necessity of Using Environmental Auditing in Its Planning Agenda*, 1996 NORTHEASTERN RECREATION RES. SYMP. 19–23; J.E. Guglielmino, *Touring to Economic Health*, 103 AM. FORESTS 31, 31 (1998); Pierre Keller, *Environmental Encounters*, *in* 727 TOURISM AND ENVIRONMENT: TOWARDS A NEW TOURIST CULTURE 36 (1996).

41 *See, e.g.*, L. James Gibson, *The Potential for Tourism Development in Nonmetropolitan Areas*, *in* ECONOMIC ADAPTATION: ALTERNATIVES FOR NONMETROPOLITAN AREAS 145, 151 (David L. Barkley ed., 2011); Mike Woods, *Diversifying the Rural Economy: Tourism Development*, *in* 10 THE RURAL SOUTH: PREPARING FOR THE CHALLENGES OF THE 21ST CENTURY 1, 1–10 (2000); Kurt Culbertson et al., *Toward a Definition of Sustainable Development in the Yampa Valley of Colorado*, 13 MOUNTAIN RES. & DEV. 359, 359–69 (1993).

42 *See, e.g.*, David A. King & William. P. Stewart, *Ecotourism and Commodification: Protecting People and Places*, 5 BIODIVERSITY & CONSERVATION 293, 293–305 (1996); Sue Sadowske & Phil Alexander, *Strategic Initiatives in Tourism and Travel Established for Cooperative Extension*, 16 RURAL DEV. NEWS 7 (1992); Lisa Bourke & A. E. Luloff, *Leaders' Perspectives on Rural Tourism: Case Studies in Pennsylvania*, 26 J. COMMUNITY DEV. SOC'Y 224, 224–39 (1995); *see* Gugliemino, *supra* note 40; *see* Keller, *supra* note 40.

As will be relevant to the focus of this research, however, no studies were found that examine the potential negative impacts of the *type* of jobs that are often created by tourism, for example, seasonal, retail, and other low-skilled service jobs. The dearth of studies in this area highlights the difficulty of assessing the relative long-term value to the State economy.

Perhaps unsurprisingly, the environmental consequences of the specific sector of eco-tourism is a relatively well-studied area. Some of these studies are outright critical of the entire eco-tourism sector.[43] Much more common, however, are studies that extoll the economic benefits of eco-tourism, while expressing caution at the potential environmental costs.[44]

Clearly, given the wide array of issues considered by just the small slice of studies represented in this brief survey, fully assessing the impact of tourism is subject to subtle factors, both positive and negative, that are difficult to capture in a basic pro forma or IMPLAN model (ones that only capture basic, quantitative inputs and outputs, with little capacity to account for more qualitative metrics of sustainability analysis, such as social equity). However, the vast majority of tourism assessments appear to do just that, opting for a one-dimensional, and potentially limited, economic input approach. Indeed, economic effects are, by their quantitative nature, often far easier to measure when compared to the hard-to-capture qualitative metrics of environmental degradation or social equity, which are often externalized and diffuse effects.

While this economic emphasis in the literature is an understandable approach from a policy perspective, it also is possibly limited in usefulness for making fully-informed decisions.[45] Many of these studies would be inadequate if one were performing a full sustainable development analysis of any given tourism activity or investment. This limitation has ramifications for West Virginia, a state where a self-perception of a chronically challenged economy

[43] *See, e.g.*, King & Stewart, *supra* note 42; G. Wall, *Is Ecotourism Sustainable?* 21 ENVTL. MGMT. 483, 483–91 (1997); Dennis M. Brown & Jon Fazzone, *How Rapid Nonmetro Growth Causes Problems in Rural Counties: The Case of Public Transportation*, 28 SMALL TOWN 16, 16–23 (1998); Sarah Krakoff, *Mountains Without Handrails . . .Wilderness Without Cellphones*, 27 HARV. ENVTL. L. REV. 417, 451 (2003).

[44] *See, e.g.*, Dimitrios, *supra* note 40, at 21; Harold Goodwin, *In Pursuit of Ecotourism*, 5 BIODIVERSITY & CONSERVATION 277, 277–91 (1996); R.L. Janiskee & P. G. Chirico, *Core-and-Buffer Management for Ecotourism in South Carolina's ACE Basin*, 1996 NORTHEASTERN RECREATION RES. SYMP. 293–95; MARC MCDILL ET AL., PROMOTING ECOTOURISM ON PRIVATE LANDS 2 (1999), *available at* http://www.csu.edu/cerc/documents/PromotingEcotourismonPrivateLands.pdf; Karin Theophile, *The Forest as a Business: Is Ecotourism the Answer?*, 93 J. FORESTRY 25, 25–27 (1995).

[45] *See generally* Forsyth, *supra* note 5.

and social demographics[46] indicates a lack of a statewide sustainable development plan since statehood.

As West Virginia makes decisions for the next long-term phase of economic development, and, as coal is phased out nationally[47] and depleted in the State,[48] sustainable development criteria might be wisely applied by policy-makers as they make the next rounds of long-term economic decisions.[49] If West Virginia moves toward a more tourism-based economy, applying the tenets of sustainability could provide a means for going beyond the typical economic benefit analysis indicated by most of the studies cited above.[50] Such an approach would be a unique and progressive approach by a state that is otherwise lagging behind in these areas.

Having demonstrated the economics-only focus of existing tourism studies, it is now useful to examine how sustainability analysis can provide a more complete understanding of tourism's costs and benefits.

B. "Easier Said Than Done": Background on the Challenges of Applying Sustainable Development Principles to Development Law

As the previous section illustrates, an economics-only approach dominates the existing body of tourism-benefits studies. Yet, it is an intuitive truth that if positive, short-term economic impacts were the only consideration of economic development, other, equally-important measurements of living standards would very likely suffer. The most obvious of these standards are environmental health and social equality.[51] In order to avoid this short-sighted and singular pursuit of economic development, adding "sustainable development" to the analysis creates an approach, which accounts for the social, environmental, *and* economic impacts of a development decision. [52] As the survey above indicates, applying a sustainable development analysis to the

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46 *See generally* Dan Witters, *North Dakota No. 1 in Well-Being, West Virginia Still Last*, GALLUP WELL-BEING (Feb. 20, 2014), http://www.gallup.com/poll/167435/north-dakota-well-being-west-virginia-still-last.aspx.

47 *See American Coal: A Burning Issue*, ECONOMIST, Jan. 28, 2012, at 14, *available at* http://www.economist.com/node/21543563.

48 *See* BUREAU OF BUS. & ECON. RESEARCH, *supra* note 2, at 21.

49 *See, e.g.*, Lawrence Messina, *Cuts and Weak Growth Hem in W.Va. Budget Picture,* CHARLESTON GAZETTE, Feb. 7, 2013, at A1, *available at* http://www.herald-dispatch.com/news/briefs/x455060147/Cuts-weak-growth-hem-in-W-Va-budget-picture.

50 *See generally* Forsyth, *supra* note 5.

51 *See* STOYANOV, *supra* note 15.

52 U.N. Conference on Environment and Development, Agenda 21, 8.5(g), U.N. Doc. A/CONF.151.26 (1992).

tourism sector—whether in West Virginia or elsewhere—is not only somewhat rare, but is also a complex and nuanced undertaking.

The measurement of economic impacts is a relatively straightforward matter of entering inputs, outputs, multiplier effects, and the like;[53] by contrast, measuring social equity and environmental impacts is inherently nebulous, even *im*measurable.[54] This difficulty is compounded by the fact that legal oversight and legal frameworks to guide the sustainable development process are not a distinct field or discipline unto themselves.[55] The fact that in the U.S. and in West Virginia development has already been achieved, through a nearly infinite, overlapping, and impossible to quantify set of national, state, and local laws, adds to the difficulty of applying any pre-existing legal apparatus to achieve sustainable development.[56] Thus, applying sustainable development principles to tourism is both conceptually difficult to quantify, and legally difficult to implement.

Of the spaghetti of development laws that already exist, such laws often directly conflict with each other, and create another layer of challenge to sustainable development in any economic arena, and in tourism in particular.[57] Much like the tourism studies above, economic development law often focuses solely on how to maximize economic development, regardless of any other factor, social equity or otherwise.[58] This built-in preference often results, perforce, in externalizing the true costs of some forms of economic development, to the detriment of social equity and environmental laws.[59]

The goals of social equity and environmental laws are also often mismatched with the goals of development law, and thus rarely see any synergistic overlap in the development process.[60] This ineffectiveness of environmental law in the development arena is exacerbated by the fact that most environmental laws are "push back"[61] rather than "pull forward"[62] laws. In other words, these environmental laws are not proactively integrated into the

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53 *See supra* notes 22–35.

54 *See generally* Andrew Whitford & Karen Wong, *Political and Social Foundations for Environmental Sustainability*, 62 POL. RES. Q. 190 (2009).

55 *See generally* Dernbach, *supra* note 16.

56 *Id.* at 623.

57 *Id.* at 626.

58 *See, e.g.*, W. VA. CODE ANN. §§ 5B-1-1 to 5B-7-5 (West 2012).

59 *See American Coal: A Burning Issue*, *supra* note 47.

60 Dernbach, *supra* note 16, at 627.

61 *See, e.g.*, The Surface Mining Control and Reclamation Act, W. VA. CODE ANN. §§ 22-3-1 to 33 (West 2013); Water Pollution Control Act, W. VA. CODE ANN. §§ 22-11-1 to 30 (West 2013).

62 *See, e.g.*, Energy and Water Savings Revolving Loan Program Fund, W. VA. CODE ANN. § 18B-5-11 (West 2013).

ongoing development process, in order to ensure environmental harms do not occur in the first place.[63] Instead, these laws usually come into effect only *after* some unacceptable threshold of damage or risk has already been crossed.[64] A further difficulty of applying sustainable development at the legislative and policy level is the inability to incorporate social equity law at any early stage of the process, other than *after* some fundamental violation has occurred.[65] In sum, the lack of legal coherence between the varying laws to which can be applied each of the "three Es" (economics, environment, and equity) of true sustainability typically creates a structural barrier to sustainable development.

This is particularly true in West Virginia, where economic development law (and tourism subsidies) focuses exclusively on direct economic gain,[66] and where environmental laws are primarily of the reactive, not proactive, "push back" model.[67] Similarly, West Virginia's social equity laws primarily function in the civil rights sphere, rather than being integrated with development law to ensure that the needs of all citizens are equally met as development decisions are made.[68] Tourism development, then, in West Virginia has largely followed the trend of the one-dimensional economic analyses surveyed above.

Thus, the pro-tourism assumptions that currently exist in West Virginia must be examined for their efficacy, which this Note proposes to do. Only upon having completed that review of the prevailing economics-only approach can the environmental and equity analytics of tourism begin to be applied. While those latter analyses are far beyond the scope of this Note, sustainable development itself is premised upon a cradle-to-grave analysis that weighs each of sustainability's "three Es" equally. This Note seeks to begin that longer process by examining one "E" in particular: the existing economic analyses of West Virginia tourism.

C. Background on the Attractiveness (and Perils) of Tourism as an Economic Solution for West Virginia

As further background for understanding how tourism is currently measured—and promoted—in West Virginia, it is necessary to examine the economic benefits that have already been recorded. Looking at just the economics "E" of sustainability metrics, there are elements of tourism in West

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63 *See American Coal: A Burning Issue*, *supra* note 47.

64 *See id.*

65 *Id.*

66 *See, e.g.*, W. VA. CODE ANN. § 5B-2E-2 (West 2013).

67 *See, e.g.*, *id.* § 22-3-25.

68 *See, e.g.*, The Human Rights Act, W. VA. CODE ANN. §§ 5-11-1 to -21 (West 2013);

Virginia that are undeniably attractive. For example, tourism provides a free flow of revenue, which requires little sacrifice in the way of environmental cost, employee hazard, infrastructure investment, or expensive higher education.[69] Indeed, the State may simply rely upon its natural beauty and cultural heritage, and tour buses will arrive.[70] Accordingly, in economic development circles in West Virginia, it is common to hear tourism evoked as a central tenet of economic development.[71] The following passage, taken from a whitewater rafting economic impact study, is exemplary of this unquestioning acceptance of tourism as a viable development strategy for West Virginia:

> The economy of West Virginia historically has been one dominated by resource extractive industries and manufacturing. As these industries have declined in recent decades, economic activity generated by commercial recreation and tourism has grown and has become a primary source of employment and income in many communities. Opportunities that attract tourists to West Virginia include those associated with the State's abundant wildland resources—it's [sic] mountains, forests, and rivers. Many thousands of people take advantage of these opportunities each year by visiting West Virginia, and the economic impacts of these visitors *are presumed to be* substantial.[72]

The "presumption" of economic impacts noted in the last sentence of this very typical promotion is an understandable reaction to tourism's quantified economic metrics: dollar inputs are relatively easy to measure and equally impressive to recite.

Indeed, the $4.27 *billion* in annual West Virginia visitor travel spending is an undeniably impressive statistic, one that single-handedly affirms the "presumed" benefits of tourism in an otherwise beleaguered State economy.[73] The numbers are equally impressive when examining the employment that $4.27 billion annual stimulation creates: the "direct employment generated" by that travel spending created an astounding 44,400 jobs.[74] The literature abounds with these substantial numbers, figures that, as stated above, satisfy the hopes of nearly every stakeholder: environmentalists,

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Forsyth, *supra* note 5, at 271.

70 *See generally* GUERILLAECONOMICS, LLC, *supra* note 29.

71 *See, e.g.*, *id.* at 3–5.

72 STEVEN A. WHISMAN, ET AL., A SUMMARY OF ECONOMIC IMPACTS OF COMMERCIAL WHITEWATER RAFTING IN WEST VIRGINIA, *available at* www.wvdnr.gov/lenforce/white/rivermgt/ww_econ.shtm (emphasis added).

73 DEAN RUNYAN ASSOCS., *supra* note 29.

74 *Id.* at 9.

coal companies, lawmakers, and anyone looking for one of those honest 44,400 jobs—a number that constitutes a significant 5.6% of total state employment.[75] Such universal appeal for tourism's promise highlights the subtlety involved in a true sustainability analysis when compared to reciting this juggernaut of financial figures.

Accordingly, applying the more rigorous sustainability lens—one that takes into account multi-generational economic and social health—to the same economic study reveals a more precise nature of that spending and employment, and this sustainability focus raises significant unanswered questions about the long-term efficacy of tourism development. For example, the largest single sector of employment gain (25,200 jobs) is in accommodation and food service jobs, that is, hotel and restaurant workers.[76] Similarly, a full one-third of that travel spending ($1.3 billion) was spent directly for commercial lodging facilities.[77] Day travelers (those who do not stay overnight) spent nearly half of the spending total (nearly $2 billion) on "gaming and entertainment."[78]

The impact study itself states the ramifications of these numbers: tourism benefits "primarily . . . service and retail firms."[79] These include "lodging establishments, restaurants, gaming establishments, recreation-oriented businesses, retail stores, gasoline service stations, transportation, and other travel-related services."[80]

In short, the tourism industry is a service industry. While that conclusion seems obvious, its implications for the economy and long-term social equity of West Virginia are a bit more subtle, but no less stark, when accounting for the multi-generational study required by a full sustainable development analysis. Such a study might also include a comparison to the nation's long-term employment trends as well, a comparison that is included in the following section.

D. The Drastically Different Service Economies of West Virginia and the Rest of the Nation

A sustainability analysis of West Virginia's service-based tourism economy should consider the larger backdrop of America's shifting national

75 *West Virginia Labor Force Estimates,* WORKFORCE W. VA., http://www.workforcewv.org/lmi/datarel/DRLMI134.html (last visited Apr. 2, 2014).

76 DEAN RUNYAN ASSOCS., *supra* note 29, at 9.

77 *Id.* at 6.

78 *Id.* The report defines "gaming" as "revenue generated on racetrack video lottery and 'live' on-site and simulcast wagering by visitors." *Id.* The report does not define "entertainment." *Id.*

79 *Id.*

80 *Id.*

economy. America has famously been moving toward a predominately service-oriented economy for several decades.[81] The new "knowledge economy" that comprises the higher paying service jobs has been a boon to the tech-savvy, well-educated masters of the universe, from Silicon Valley pioneers, to public relations wizards, to the more familiar but no less gilded financial advisors and corporate lawyers.[82] While there is much lamenting about America's decline as a manufacturing economy,[83] the shift to a service economy has provided hefty economic rewards.[84]

The contrast between higher paying service jobs and lower paying tourism service jobs provides a helpful context for economic development in West Virginia. Tourism is undeniably a service industry. However, when one looks at the types of service jobs tourism creates, the employment gains to be had are, perhaps, not nearly as economically beneficial as the jobs they might replace.[85] While actual data on tourism wages are relatively scarce—partly because the Bureau of Economic Analysis does not delineate tourism as a separate occupational category[86]—it is an intuitive conclusion that relatively menial service employment, such as waiting tables or working a cash register, are hardly the American service jobs of the future.[87]

Instead, the service jobs of tourism do not appear to match the kinds of high-end, "knowledge economy" service jobs found elsewhere in the country. For example, the subject of the above-quoted whitewater tourism impact study[88] is one of the standard bearers of West Virginia tourism; yet, the whitewater rafting industry primarily employs—on a commission and tips basis—seasonal migrant workers who are either under- or over-educated, and who rarely have any ownership or revenue interest in the businesses that employ them for three months out of a year.[89] Similarly, chain hotels—

[81] *See* U.S. DEP'T OF COMMERCE, SERVICE INDUSTRIES AND ECONOMIC PERFORMANCE 5 (Mar. 1996), *available at* www.esa.doc.gov/sites/default/files/reports/documents/serviceindustries_0.pdf.

[82] *See, e.g.*, *Work in Progress*, ECONOMIST, July 22, 1999, *available at* www.economist.com/node/224892.

[83] *See, e.g.*, Harold Meyerson, *A New Vision For America: Restoring a Country That Makes Things*, WASH. POST (Jan. 25, 2012), www.washingtonpost.com/opinions/a-new-vision-for-america-restoring-a-country-that-makes-things/2012/01/25/glQAETCRRQ_story.html.

[84] *See, e.g.*, DOUGLAS B. CLEVELAND, THE ROLE OF SERVICES IN THE MODERN U.S. ECONOMY 1 (1999), *available at* ita.doc.gov/td/sif/PDF/ROLSERV199.PDF.

[85] *See infra* Part IV.

[86] *See generally Standard Occupation Classification*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/soc/major_groups.htm (last visited Apr. 2, 2014).

[87] *See* U.S. DEP'T OF COMMERCE, *supra* note 81, at 19.

[88] *See* WHISMAN ET AL., *supra* note 72.

[89] *See infra* Part IV.B.

typically owned by out-of-state individuals—likely receive the lion's share of the over one billion tourism dollars spent annually on lodging in West Virginia;[90] in exchange, these chain hotels typically employ local citizens whose education likely precludes them from attaining a higher paying wage. This example is representative of the uneven exchange the tourism industry can typically create.[91] Undeniably, those hotel jobs are important to the citizens that hold them, but much of that one billion in lodging revenue, impressive as it appears in annual economic reports, likely goes out of state to the corporate owners of the facilities. Moreover, this low level of local ownership is also evident in many of the chain gas stations, restaurants, and retail stores across the State that are largely credited with absorbing the $4.27 billion generated by tourism.[92]

These are all short-hand assumptions, of course, but nonetheless, an economy largely comprised of lower paying service jobs is likely to be poorly suited to compete in the larger national service economy that rewards higher and more flexible skill sets. As West Virginia continues to promote tourism, then, part of any economic analyses should include an assessment of whether other, higher paying service jobs might be created by directing declining State revenue elsewhere, as discussed *infra*, Part III, section C.

The lower-level job skills needed for West Virginia's tourism industry are reflected in most impact studies of tourism. For example, an impact study of the motor coach tourism industry finds "food and beverage," "retail purchases," and "lodging" among the top four spending categories generated by the tourism sector."[93] While every impact study presents undeniably attractive multiplier effects, even this study acknowledges that, for example, "much of this [tourism] spending is on retail goods, and most of the value embedded in these products comes from other states (or other countries) and *does not add value* to the West Virginia economy."[94] A fuller sustainability analysis, one that adjusts added revenue for true added value, would shed light on the precise overall value that tourism can add to West Virginia's economy over the long term.

Of course, West Virginia is a chronically under-performing economy, with a relatively undereducated workforce.[95] Thus, in an economy with limited

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90 *See* DEAN RUNYAN ASSOCS., *supra* note 29, at 6.

91 *See* SEAN O'LEARY & TED BOETTNER, W. VA. CTR. ON BUDGET & POLICY, THE STATE OF WORKING WEST VIRGINIA 8 (2011), *available at* wvpolicy.org/downloads/SWWV2011.pdf (noting that about half of West Virginia's workforce has obtained only a high school degree).

92 *See* DEAN RUNYAN ASSOCS., *supra* note 29, at 6.

93 GUERILLAECONOMICS, LLC, *supra* note 29, at 11.

94 *Id.* at 15 (emphasis added).

95 *See* O'LEARY & BOETTNER, *supra* note 91, at 8 (noting that about half of West Virginia's workforce has obtained only a high school degree).

possibilities, one cannot wholly look askance at tourism. Nonetheless, when one combines the limited earning potential of those service jobs created by tourism, as discussed *supra* this section, with the unquestioning political patronage and subsidy that tourism receives, the economic and equity components of a full sustainability analysis[96] may cast great doubt on tourism development. This is especially so when one considers the larger trajectory of the State as it loses higher paying manufacturing and extractive jobs, in exchange for lower paying service jobs.[97] Consequently, a specific examination of West Virginia's tourism laws and case law is necessary to shed light on this potential long-term economic challenge.

E. Background on Tourism Subsidies in West Virginia

Given tourism's outwardly irreproachable monetary jolt to the service economy in the short-term,[98] it is no surprise that the industry receives significant State subsidies, and it is important to understand the laws that codify such support. By providing direct financial support to the tourism industry, state officials can be seen as not only "doing something" about a positively-viewed sector of the economy, but can also take credit for the industry's widely-touted successes.[99] The popular and unquestioning vision of tourism is reaffirmed by the hortatory statement of legislative purpose that announces the West Virginia Tourism Development Act:

> The Legislature finds and declares that the general welfare and material well-being of the citizens of the state depend, in large measure, upon the development of tourism development projects in the state and that it is in the best interest of the state to induce the creation of new, or the expansion of existing, tourism development projects within the state in order to advance the public purposes of relieving unemployment by preserving and creating jobs and by preserving and creating new and greater sources of revenues . . . . [N]ew or expanded tourism developments are of paramount importance to the state and its economy and for the State's contribution to the national economy.[100]

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96 *See generally* U.N. Conference on Environment and Development, *supra* note 52.

97 *See infra* Part III.B.

98 *See supra* Part II.C.

99 *See, e.g.*, Eric Eyre, *Cabela's to Open Store at Southridge*, CHARLESTON GAZETTE (July 28, 2011), www.wvgazette.com/News/201107280568 (in which West Virginia Governor Tomblin conflates the opening of a retail outlet with the State's "vibrant tourism industry").

100 W. VA. CODE ANN. § 5B-2E-2 (West 2013).

West Virginia's State Code embodies here the universally accepted economic benefits that accrue from tourism development. The Code provides for a Tourism Development subsidy and a Direct Advertising Grant subsidy, an examination of both of which follows.

1. The Tourism Development Act Subsidy

Clearly, the presumption of the benefits of tourism has found its way not only into political thinking, but into state economic development efforts as well: the Tourism Development Act creates a 25% tax credit for the construction of any approved "entertainment destination center" or "tourism attraction."[101] Interestingly, the law provides for an additional 10% tax credit subsidy (for a total of 35%)[102] if the attraction is built on or near a current or former surface mine site,[103] arguably an indirect subsidy to the brownfields left behind by the coal mining industry. Although assessing the full tax credits that have subsidized these kinds of tourism infrastructure projects is elusive,[104] the following example is illustrative of the sustainability implications of State subsidy of tourism.

a. Case Law on Tourism Subsidies

A multiplex theater built on a former strip mining site in Logan County, West Virginia, applied for and received a tax credit for $393,176.30, because the theater (the Fountain Place Cinema 8), was held by the Supreme Court of Appeals of West Virginia to be a "destination-oriented recreation and tourism" business under the state statute.[105] The Court held that state taxpayer subsidies could support any destination-oriented tourism business in an economically stagnate area, including the subsidy of a miniature golf course and other destinations, as they are "attention getting" attractions.[106] The destination-oriented status of the multiplex theater was upheld based on the anecdotal (but unproven) testimony from the theater owners that 30% of the theater patrons came from next door Kentucky, and that 10% of the patrons

[101] *Id.* § 5B-2E-7.

[102] *Id.*

[103] *Id.*

[104] Calls by the author to the Development Office did not result in the procurement of any specific information.

[105] Fountain Place Cinema 8, LLC v. Morris, 707 S.E.2d 859, 862 (W. Va. 2011).

[106] *Id.* at 862–64.

came from the nearby four-wheeler attraction, the Hatfield-McCoy Trail System.[107]

While it is beyond the purview of this Note to discuss the larger implications of taxpayer subsidy, the allocation of almost $400,000 in taxpayer subsidies to the construction of a multiplex theater, and presumably, for miniature golf courses and similar "attention getting"[108] attractions has implications for long-term sustainability. While there are certainly additional revenues generated from a movie theater, and from the additional bonus of inputs from out-of-state visitors, the jobs created by a movie theater are undeniably low-skilled and presumably low-paying. Moreover, because of the particular site of the theater—at a strip mall on a former surface mine site in one of West Virginia's more economically and environmentally devastated counties—this single taxpayer-subsidized project potentially implicates each one of sustainability's three "Es," economics, environment, and equity.

This subsidy of creating employment on a former surface mine site suggests a legislatively-endorsed "trading down" from high-paying mining and industrial jobs, for post-coal, low-skilled service wages. While mining employment in West Virginia has modestly increased in recent years, high-paying jobs for the high school-educated have declined.[109] Anecdotally, Logan County has in this case received subsidies in a high-wage to low-wage exchange that will likely continue as West Virginia's coal reserves are further depleted.[110]

Lastly, because equity is one of the three "Es" of true, long-term sustainability, there are equity implications for additional subsidizing of the service sector on or around surface mine sites. A peer-reviewed 2011 West Virginia University study, for example, linked the proximity of surface mining to significantly higher cancer rates in southern West Virginia,[111] and a study in the American Journal of Public Health confirmed that mountaintop removal areas correlated with the substantial reductions in overall human health.[112] Granting an additional 10% tax credit for the development of former surface mine sites is clearly in line with the state legislature's stated statutory goal of

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107 *Id.* at 861.

108 *Id.* at 862.

109 SEAN O'LEARY & TED BOETTNER, W. VA. CTR. ON BUDGET & POLICY, BOOMS AND BUSTS 13 (2011), *available at* wvpolicy.org/downloads/BoomsBusts072111.pdf.

110 *See* BOWEN, *supra* note 6.

111 Michael Hendryx et al., *Self-Reported Cancer Rates in Two Rural Areas of West Virginia With and Without Mountaintop Coal Mining*, 37 J. COMMUNITY HEALTH 320, 320 (2012), *available at* springerlink.com/content/3h175p782691j628.

112 Keith J. Zullig & Michael Hendryx, *Health-Related Quality of Life Among Central Appalachian Residents in Mountaintop Mining Counties*, 101 AM. J. PUB. HEALTH 848, 848 (2011).

"relieving unemployment by preserving and creating jobs."[113] However, this additional 10% is arguably an ineffective subsidy to the coal industry, an industry that, since 2001, has converted only about 7% of the permitted area of 84,793 mountaintop removal acres to industrial, commercial, public service, or residential use, thus leaving 93% of the land behind economically and ecologically valueless in the near to middle future.[114] Based on this example alone, a fuller analysis of the true benefits, burdens, and opportunity costs of service industry subsidy should be undertaken as West Virginia commits public resources to tourism development in pursuit of job creation, particularly on former mountaintop removal sites.

2. The Direct Advertising Grants Subsidy

The second primary subsidy vehicle in West Virginia is the Division of Tourism's Direct Advertising Grants Program,[115] which has similarly striking economic and equity implications, ones that are not fully captured by the typical economic input analysis of tourism. Under this subsidy, approved destinations and attractions apply for an up to 50% matching grant for advertising campaigns outside of the State, if the advertisements are designed to attract out-of-state visitors to West Virginia.[116] While the specifics of the advertising plan must be submitted to the Division of Tourism as part of the application process,[117] the eventual effectiveness of the advertising need not be shown.[118] With little apparent scrutiny beyond the aggregate economic benefits provided in the Tourism Office's annual reports,[119] this absence of accounting for actual subsidy effectiveness makes it difficult for policymakers to ascertain whether the subsidies are an effective use of public tax dollars.

a. Lottery-Funded Subsidy of West Virginia Tourism

This subsidy of advertising for West Virginia's tourism industry is explicitly premised upon capitalizing on out-of-state revenue to create more service jobs. However, the subsidy program is entirely funded by another sector closely linked to West Virginia's working poor and undereducated: the West

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113 W. VA. CODE ANN. § 5B-2E-2 (West 2013).

114 *See Few Sites Redeveloped After Mining*, CLEVELAND.COM (Dec. 29, 2010), www.cleveland.com/business/index.ssf/2010/12/few_sites_redeveloped_after_mi.html.

115 W. VA. CODE R. § 144-1-1 (2013).

116 *Id.* § 144-1-2.5.

117 *Id.* § 144-1-3.4.

118 *See id.*

119 *See, e.g.*, DEAN RUNYAN ASSOCS., *supra* note 29.

Virginia State Lottery.[120] The "poor tax" implications of state lotteries are widely accepted, given the multiple studies that confirm that they are played more often by poor, undereducated people with less money to spend.[121] Given this accepted notion of the lottery as a regressive "poor tax," the equity ramifications of the State lottery's indirect subsidy of low-skilled, low-paying service job creation arguably exhibits a similar cycle of inequity as does the surface mine tourism subsidy. Each of these economically-beleaguered portions of the State pay the externalized costs of subsidizing tourism, be it through already low wages lost to gambling or through living in areas impacted by mountaintop removal mining. This notion is anecdotal conjecture, of course, based primarily on assumptions that poorer, less-educated people are more likely to participate in lotteries,[122] and live in areas impacted by surface mining.[123] Nonetheless, additional study is clearly needed in this area to determine precisely which citizens are funding the West Virginia Lottery's subsidy of state tourism, and, if it is indeed poorer citizens who do so, whether there is a less regressive form of raising revenue.

Since 1994, the lottery has contributed $162 million in revenue for the granting and administering of tourism advertising funds, with $9 million appropriated in fiscal year 2011.[124] In a further element of the potential social equity implications of this funding stream, the specific source of funds for the advertising program is the lottery's Video Lottery: video poker machines that can be found at gaming facilities across the state.[125] Anyone familiar with the byways of West Virginia knows that these gambling machines populate not just the more upscale casino destinations, but also the myriad smaller video gambling dens that dot the rural landscape (often with innocuous female names like "Mimi's" or "Dottie's"). The working, undereducated poor likely contribute a large, if not dominant, share of those revenues,[126] which comprised 60% of the State lottery's revenue in 2011, with over $700 million in sales.[127]

One conjectural conclusion that can be drawn from this trend is that poor, uneducated West Virginians are subsidizing, through lottery and video

120 W. VA. CODE R. §§ 144-1-1 to 144-1-3.

121 *See generally* ALICIA HANSEN, TAX FOUNDATION, STATE-RUN LOTTERIES AS A FORM OF TAXATION (2005), *available at* taxfoundation.org/article/state-run-lotteries-form-taxation; Mary O. Borg et al., *The Incidence of Taxes on Casino Gambling: Exploiting the Tired and Poor*, 50 AM. J. ECON. & SOC. 323, 323 (1991).

122 *See* Borg et al., *supra* note 121, at 324.

123 *See generally* O'LEARY & BOETTNER, *supra* note 109, at 10–11.

124 JAMES M. TONEY, WEST VIRGINIA LOTTERY, COMPREHENSIVE ANNUAL FINANCIAL REPORT 3 (2011), *available at* wvlottery.com/pdf/WVL2011AR.pdf.

125 *Id.*

126 *See supra* note 121.

127 *Supra* note 124 and accompanying text.

poker participation, the advertising that brings both dollars and service jobs to West Virginia. No study apparently exists that identifies the primary jobs held by video lottery players in West Virginia, but presumably many of the working poor who play the lottery often hold the very same service jobs typically supported by the tourism business, such as undereducated restaurant or hotel workers. Further studies of this possible link are clearly needed, if West Virginia is to calculate the full benefits (mostly service job wages) and burdens (possibly lost wages to lottery and video poker purchases) of tourism subsidies.

In a further feedback loop of this subsidy cycle, State advertising subsidies are predominately given to the very racetracks that in turn provide that same lottery funding.[128] Such "recycling" of tourism dollars is perhaps appropriate: the same dollars surrendered to video gambling machines perhaps go to pay for advertising for that very same gambling facility, which employs low-skilled hospitality service workers. Again, this economic linkage is conjectural, but clearly merits further study as West Virginia continues to subsidize gambling establishments.

While there are no apparent statistics that separate in-state versus out-of-state contributions to video lottery machines, there are repercussions for equity and economics when analyzing West Virginia's subsidy of tourism. A sustainability analysis of tourism is difficult to exert, however, as there appears to be a pro-tourism status quo in West Virginia. This built-in economic bias—or at least one-dimensional thinking—is reflected by the available tourism literature and studies discussed above. By highlighting that bias, it is clear that additional studies are needed to assess the link between tourism subsidies and the externalized effects of low wage labor at former surface mine sites and at gambling destinations. Only then can the long-term *costs* of tourism be weighed against its very well-documented economic benefits. Having examined the nature of West Virginia's subsidies of tourism, it is important to next examine the rigor and methods of existing State studies that are used to justify such subsidies to the taxpayers that fund them.

III. THE FLAWED NATURE OF WEST VIRGINIA'S TOURISM BENEFIT STUDIES: ILLUSTRATIVE DISCUSSION AND ANALYSIS

In addition to statutory and case law that presupposes a net benefit from state-sanctioned tourism subsidy, a pro-tourism bias may also be indicated in much of the immediately available tourism impact studies in West Virginia. That potentially flawed body of literature makes a full sustainability analysis of tourism difficult, in the absence of further study. These existing studies reveal their collective biases by both their unqualified boosterism of tourism benefits,

[128] *See generally* Phil Kabler, *Casinos Dominate State Tourism Grants*, CHARLESTON GAZETTE (OCT. 29, 2013), http://www.wvgazette.com/News/201310290119.

as well as through methodological flaws that are apparent even to a statistical layman.

A. Pro-Tourism Bias in the Economic Assessments of Tourism in West Virginia

This pro-tourism bias, perhaps unintentional, is understandable: there is *already* a statutory, institutional bias in favor of tourism that might reinforce a trend of bias within State-funded economic impact studies. As discussed above, the "something in it for everyone" nature of tourism appears to incentivize all stakeholders to uncritically promote the immediately apparent benefits. Whether it is the Legislature that approves tourism subsidies, the Division of Tourism that receives and administers that funding, the recipients that receive subsidies and contribute dollars into the economy, the state lottery which benefits from the goodwill of the funding stream they provide, or the consulting firm that generates annual reports for those same stakeholders, there is little immediate incentive for any of these stakeholders to put tourism though a more critical analysis, beyond direct economic inputs. A few examples illustrate this institutionally-encouraged, one-dimensional assessment of tourism.

1. Whitewater Tourism Economic Impact Study

The whitewater rafting industry in southern West Virginia is often held up as a primary symbol of tourism-as-economic-development in West Virginia.[129] However, a study of its economic benefits exhibits clear methodological flaws, which are easily overshadowed by the impressive numbers the study generates. A 1995 tourism study concluded that statewide impacts of whitewater rafting were $59.3 million in total output, $22.9 million in personal income, $16.6 million in employee compensation, $3.6 million in taxes, and the creation of 1,415.8 "jobs."[130]

While those numbers are undeniably impressive, the underlying methods to reach them are questionable. The study, commissioned by another state tourism stakeholder, the West Virginia Division of Natural Resources, is based on surveys of boaters in the midst of their boating trip.[131] That survey was comprised of asking the boaters to estimate how much they had already

[129] *See, e.g.*, MARY MEANS & ASSOCS., WEST VIRGINIA TEN YEAR TOURISM PLAN 4 (2012), *available at* wvcommerce.org/App_Media/assets/doc/travelandrec/industry/reports/AECOM-West-Virginia-Final-Report.pdf.

[130] WHISMAN, ET AL., *supra* note 72 (As noted in table 4, "Jobs" in this report include direct, indirect, and induced jobs.).

[131] *Id.*

spent on their trip, and to estimate how much they would spend during the remainder of their trip[132] In other words, the survey asked boaters to subjectively predict both the present and the *future*. Moreover, the study does not include how many respondents were included in the survey, and the report also states that it did not distinguish between in-state boaters and out-of-state boaters, making the "output" figure vague because it remains unknown how many dollars would have already been spent inside the State's economy.[133] Moreover, the multiplier effect of the spent dollars also varied widely depending upon the category, ranging from 1.25 to 1.6, with no explanation for how those varying multiplier effects were determined.[134]

These methodological factors have serious implications for the accuracy and reliability of the impressive tourism numbers associated with whitewater rafting. Clearly, there are economic benefits associated with this and with other forms of West Virginia tourism. However, it is impossible to perform a more robust sustainability analysis—that is, to determine the true long-term value proposition of whitewater rafting—without more reliable numbers. In the absence of such scrutiny, the whitewater rafting industry will continue to be heralded as one of the great tourism success stories of West Virginia, while its precise economic benefits remain literally unknown.

The tourism industry itself appears to be complicit in the opaque metrics that boost the profile of tourism benefits. The Division of Tourism's Research Coordinator stated that the "industry keeps their numbers quiet."[135] While the Division itself might promote the "newest thing" like zipline tours, the Division does not "dig down" into the actual numbers of how many jobs are created, or what kind.[136] Outside of major investments, such as the recent casino expansion at the Greenbrier, "the industry brags about their numbers to a certain extent, but [the Division of Tourism] never tracks" actual employment figures on a site-specific basis.[137] While it is a stretch to say there is a conspiracy of pro-tourism in West Virginia, it is telling that, when it comes to actual economic data beyond aggregated inputs throughout the tourism sector, it is difficult to pinpoint the true, actually realized benefits and their potential impact on West Virginia's long-term quality of life.

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[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] Telephone Interview with Tom Kane, Research Coordinator, WV Development Office (Dec. 4, 2012).

[136] *Id.*

[137] *Id.*

2. The Hatfield-McCoy Trail Tourism Economic Impact Study

The intersection, and possible conflict of interest, between the public sector and both the tourism and extractive industries in tourism metrics is more striking in a study of the Hatfield-McCoy Trail system, which is located in poverty-plagued southern West Virginia.[138] The riders of this trail system, incidentally, were credited with helping to win the Logan Cineplex 8 its "tourism destination" subsidy.[139] While the public, state-sanctioned economic support for this project is surprisingly difficult to quantify (though the initial investment was a $1.5 million appropriation from the West Virginia legislature in 1997[140]), the trail system is well known for its use of post-surface mine land on former mountaintop removal sites, a use that may serve to improve the public acceptability of that highly-controversial[141] and unhealthy[142] form of mining.

This intersection of tourism and the extractive industries has interesting, if difficult to quantify, implications for a full sustainability analysis of the trail system. In order to gain support of the extractive industries for the trail system, for example, the trail authority "promised not to get in the way of coal, timber, and gas extraction."[143] Further, there is an intense and well-documented public relations interest of the extractive industry to highlight the productive use of surface mine land after the coal has been removed. Unsurprisingly, the single largest land or leaseholders of the Hatfield-McCoy trail lands are the Pocahontas Land Company (headquartered in Pennsylvania), Consol Energy (also headquartered in Pennsylvania), and Alpha Natural Resources (headquartered in Virginia). These out-of-state landholders comprise most of the Hatfield-McCoy landholdings, and they share in the revenue generated from the trail system.[144] Thus, it could be argued that the extractive industry, at least in the case of the Hatfield-McCoy trail system, is another stakeholder with an interest in a positive perception of the benefits of tourism.

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138 MARSHALL UNIV. CTR. FOR BUS. & ECON. RESEARCH, THE ECONOMIC IMPACT OF THE HATFIELD~MCCOY TRAIL SYSTEM IN WEST VIRGINIA 1–13 (2006), *available at* www.sharetrails.org/uploads/EconomicStudies/The%20Economic%20Impact%20of%20the%20 Hatfield-McCoy%20Trail%20System_10.31.06_LR.pdf.

139 *See supra* Part II.E.1.a.

140 Telephone Interview with Jeffrey Lusk, Chairman, HMTS Authority (Mar. 29, 2013).

141 Most West Virginians oppose mountaintop removal mining. *See generally* Memorandum from Lake Research Partners & Bellwether Research & Consulting to Interested Parties 1 (Aug. 3, 2011) (on file with author), *available at* http://www.lakeresearch.com/news/mtr/LRP-Bellwether%20Memo%20on%20MTR%20Survey%20Findings.pdf.

142 *See, e.g.*, *supra* note 111.

143 *See supra* note 140.

144 *See supra* note 140.

Like the theater on the former surface mine in Logan, the trail system is a telling, if elusive, confluence of sustainability metrics that fail to be captured in the one economic impact study of the system that has been completed.

Marshall University, which has released several reports on the economic benefits of coal for West Virginia without regard to any externalized costs,[145] performed a methodologically flawed study of the trail system's economic impacts on the Southern coalfields. "The Economic Impact of the Hatfield-McCoy Trail System in West Virginia" report unsurprisingly boasts some impressive tourism figures as a result of the system: the total "output" of the trail system was $7.7 million, the additional income generated was $2.7 million, and 146 jobs were created.[146]

Looking beyond those raw numbers, the study outwardly appears to engage in a "numbers game." For example, the specific multiplier effect used for the study, while alluded to, is never provided, and the period for the above gains is never stated (i.e., whether this is an annual estimate, a five-year estimate, etc.).[147] Moreover, the economic benefits include such dubious benefits like the reduced medical costs due to the elderly "hiking" on the trails,[148] even though the system is almost exclusively used, as a practical matter, for ATV use.[149] Furthermore, the economic benefits also include governmental grants, subsidies, and advertising costs.[150] Perhaps most surprising, the economic "output" includes increases in gasoline station sales, without accounting for the increased traffic on the newly opened Corridor G, a major four-lane highway that drives directly through the central section of the Hatfield-McCoy trail system.[151] To the study's credit, it alludes to this external factor by acknowledging the existence of Corridor G traffic, but then simply asserts that "there is no doubt that the Hatfield-McCoy Trail System has been a major factor in [increasing gasoline sales in the area] this development."[152]

The Hatfield-McCoy Trail System is widely regarded as a tourism success story in West Virginia, yet this one-dimensional financial analysis is consistent with most tourism studies, and the obvious flaws of this study are causes for concern about how tourism is assessed in West Virginia.

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145 *See, e.g.*, CALVIN KENT, MARSHALL UNIV., TAXATION OF COAL: A COMPARATIVE ANALYSIS (2011), *available at* www.iogawv.com/resources/Docs/Marshall%20Study%20NaturalGasFinal.pdf.

146 MARSHALL UNIV. CTR. FOR BUS. & ECON. RESEARCH, *supra* note 138, at 3.

147 *Id*. at 38.

148 *Id.* at 24.

149 *Id.* at 54.

150 *Id*.

151 *Id.* at 2.

152 *Id.*

The statistical rigor of such impact assessments is important, because state subsidies are often the primary driver of these activities. As of 2006, approximately 40% of the trail system's revenue was generated through state and federal grants.[153] As for the resulting benefits, beyond the flawed and arguably inflated Marshall study, anecdotal accounts of trail benefits raise further sustainability questions. The chairman of the trail system authority referred to the increased retail businesses popping up in surrounding towns, pointing out as examples recently built Wendy's and Hardees, although many new restaurants are locally-owned as well.[154] He noted that most trail-themed merchandise is sold in local retail outlets, most of which are lodging accommodations and gas stations.[155] These references to the trail system's benefits anecdotally suggest that low-wage jobs are the primary employment gains provided by this tourism attraction. It should be noted that even increased fast food and gas station purchases benefit those business owners, who may in turn increase investment in their community. Those "multiplier effects," however, are not explicitly captured in the study.

As for direct employment in the Hatfield-McCoy system, there are 21 full-time and 20 part-time employees as a result of the trail system, with the full-time workers receiving state benefits.[156] Mr. Lusk remarked, however, that it is often difficult to find workers with appropriate and specialized skill sets, because such workers find it relatively unattractive to work in such a far-flung, impoverished part of the State.[157] Such dire economic conditions highlight the imperative that long-term sustainability metrics be considered as southern West Virginia's economy must be rebuilt virtually from scratch in a post-coal economy that will disproportionately impact the southern half of the State.

3. The Statutory Problem of Flawed Economic Analyses of Tourism in West Virginia

There is little long-term benefit in "puffing" the numbers in the way that the Hatfield-McCoy study appears to do, because such inflation and misrepresentation, however well-intentioned, creates a feedback loop of misinformation among policymakers. As an example of this loop of faulty reasoning, the legislative grant of authority to the Hatfield-McCoy authority recites the now familiar litany of tourism benefits: "will provide significant

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153 AUDITED FINANCIAL STATEMENTS HATFIELD-MCCOY REGIONAL RECREATIONAL AUTHORITY 5 (2007), *available at* http://www.legis.state.wv.us/legisdocs/reports/agency/H07_CY_2006_85.pdf.

154 Telephone Interview with Jeffrey Lusk, Chairman, HMTS Authority (Mar. 29, 2013).

155 *Id.*

156 *Id.*

157 *Id.*

economic and recreational benefits to the State and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities."[158] With this reference to the previously outlined problematic and possibly inflated impact study of whitewater rafting,[159] the cycle of flawed analysis of tourism benefits has come full circle: false tourism assumptions have been written directly into the state code. In turn, this further evinces a need to control for that distorting effect when comparing tourism with other viable forms of state investment.

This stakeholder-driven boosterism of tourism clearly supplants the more rigorous methodology of true sustainability analysis. Moving forward, economic analysis should be augmented by the larger, long-term view that sustainability affords. While this Note does not propose to conduct such a study, West Virginia evinces larger economic and employment trends implicated by tourism investment that emphasize the need to put tourism investment through more exacting, accurate, and holistic sustainability analysis. Only by creating this new framework for scrutinizing the sustainability benefits of tourism can a state like West Virginia more judiciously chart a new way forward as non-sustainable, extractive industries decline.[160] Having examined the tourism-service sector of West Virginia, it is illustrative to now examine that employment sector within the context of larger employment trends across the State's entire economy.

B. Tourism's Effect on the Shift from High-Paying Manufacturing Jobs to Low-Paying Service Jobs

Based largely on the tourism impact studies examined in Part II, *supra*, a primary assumption of this Note is that tourism primarily stimulates low-skilled and relatively low-wage jobs. Tourism-service jobs, then, must be examined in relation to the already occurring shift of most of the State's workforce to lower paying service jobs. If tourism simply creates more low-paying service jobs, then an ongoing sustainability analysis of the tourism industry should go beyond the low-hanging fruit of positive environmental impacts comparisons and also examine the underlying economic and equity trends in the West Virginia workforce. This is a particularly essential approach when the statutory goal of tourism investment is additional revenue and job creation. Seen in the light of this stated job-creation priority of tourism subsidy, the benefits of tourism deserve a greater level of scrutiny and more nuanced

158 W. VA. CODE ANN. § 20-14-1 (West 2013).

159 *See supra* Part II.C.

160 *See* BOWEN ET AL., *supra* note 6.

studies of its economic impact, particularly when one considers the unique position of West Virginia's workforce.

1. West Virginia's Nationally Disadvantaged Workforce

By almost every relevant metric, West Virginia's workforce is ill-suited to create and fill the higher paying jobs of America's dominant and growing service sector, such as financial services, IT, and the traditional professions, and is thus likely only to be qualified for the lower paying service jobs, including those created by tourism. West Virginia's labor force is less educated than the average American worker, with 23.9% of West Virginians holding an undergraduate degree, compared to 32% for the United States.[161] Furthermore, West Virginia has the third lowest amount of workers with a college degree.[162] In fact, 40% of the State's workforce had only a high school degree in 2011, also below the national average.[163]

Another telling indicator is the increasing difficulty for the undereducated to get a job in the first place: between 1979 and 2007, those with only a high school education saw a 9.3% drop in their labor force participation rate.[164] Against this backdrop, West Virginia unsurprisingly, historically has the second lowest per capita income in America.[165] While grim labor statistics are nothing new for West Virginia, this tandem threat of an undereducated workforce earning lower than average wages does not bode well for an economy that pins its hopes on tourism, without committing significant investment to other areas.

2. The Decline of High-Paying Manufacturing Jobs in West Virginia

Of greatest importance, the undereducated workforce in West Virginia can no longer depend on high-paying manufacturing jobs. As a contributor to Gross State Product ("GSP")—a means of accurately measuring the economic productivity of a given industry as compared to others—manufacturing was the

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161 SEAN O'LEARY & TED BOETTNER, W. VA. CTR. ON BUDGET & POLICY, THE STATE OF WORKING WEST VIRGINIA 9 (2012), *available at* www.wvpolicy.org/downloads/SWWV2012_091912.pdf.

162 *Id.*

163 *Id.*

164 TED BOETTNER ET AL., W. VA. CTR. ON BUDGET & POLICY, THE STATE OF WORKING WEST VIRGINIA 5 (2008), *available at* www.wvpolicy.org/downloads/SWWV2008.pdf.

165 *See Regional Data, GDP & Personal Income*, U.S. BUREAU OF ECON. ANALYSIS, http://bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=4#reqid=70&step=1&isuri=1&7028=-1&7040=-1&7083=levels&7029=48&7022=48&7023=0&7024=non-industry&7025=0&7026=xx&7027=2013&7001=448&7031=0&7090=70&7033=-1 (last visited Apr. 2, 2014).

largest contributor to the state economy in the private sector in 2007;[166] government is the largest single contributor, another sign of West Virginia's overall malaise.[167] Despite its importance to the State economy, however, manufacturing declined by over 50% as a share of state employment, between 1979 and 2007.[168] "Per worker productivity," as a percentage of contribution to a state's GSP, is high for the jobs requiring higher education, such as utilities, information, professional and technical services, and management of companies.[169] Conversely, the level of productivity is low for the low wages of industries associated with tourism, such as retail trade, arts entertainment and recreation, accommodation and food services, and other non-government services jobs.[170] Taken together, the bulk of the low-skilled jobs for which most West Virginians qualify presumably add little to the state's GSP, while there are few workers in the state to fill the jobs that do make significant GSP contribution. Against this backdrop of such low-productivity (and thus low income) jobs increasing in numbers, manufacturing is declining.

3. The Growing Proportion of Lower Paying Service Jobs in West Virginia

The manufacturing sector sustained the greatest losses in West Virginia during the Great Recession,[171] which hit particularly hard for the undereducated, as manufacturing was likely their last high wage job (and likely their last union job, with insurance and pension benefits). Since 1979, goods-producing jobs have decreased by a staggering 52% in West Virginia.[172] According to Workforce West Virginia data, manufacturing jobs declined by almost 30% between 2002 and 2012.[173] At the same time, however, service-providing jobs have increased as a share of total West Virginia employment, comprising 85% of total employment in 2012.[174] That increase in the service

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[166] BOETTNER ET AL., *supra* note 164, at 10.

[167] *Id.*

[168] *Id.* at 11

[169] *See id.* at 9.

[170] *See id.*

[171] TED BOETTNER ET AL., W. VA. CTR. ON BUDGET & POLICY, THE STATE OF WORKING WEST VIRGINIA: THE ROAD TO RECOVERY 11 (2010), *available at* http://www.wvpolicy.org/downloads/WVCBP_Working_WV_2010_022511.pdf.

[172] BOETTNER ET AL., *supra* note 164, at 11.

[173] *Compare West Virginia Employment and Wages – 2002*, WORKFORCE WEST VIRGINIA, http://www.workforcewv.org/lmi/ew2002/default.htm (last updated Sept. 3, 2003), *with West Virginia Employment and Wages – 2012*, WORKFORCE WEST VIRGINIA, http://www.workforcewv.org/lmi/EandWAnnual/EW12Menu.html (last updated May 29, 2013).

[174] *See supra* note 173.

sector has been disproportionate in the lower paying service jobs: leisure and hospitality jobs have increased by 16% in the same period, while the more lucrative professional and business service sector grew by only 7%, and information services fell by 30%, and finance fell by 6%.[175]

Also troubling is the pattern of wage rates: in the third quarter of 2011, the average weekly wage in the manufacturing sector was $1,003, while the leisure and hospitality weekly wage was less than a third of that, at $307.[176] This is a difficult trend for working families in West Virginia, as they are shifting from higher paying into low-paying, poor quality jobs. Indeed, in a state where the largest private employer is Wal-Mart,[177] this large-scale transition from manufacturing to low-skilled service jobs is a genuinely frightening trend for all West Virginians, and it merits very serious consideration and deliberation from policy makers.

This larger diaspora of workers out of higher paying manufacturing jobs into lower paying service jobs can by no means be laid at the feet of the expansion of tourism. However, State policies are by their nature a series of measured decisions about where to allocate limited State resources. With so many manufacturing jobs gone and unlikely to come back, West Virginia is faced with the prospect of an undereducated workforce with few opportunities for advancement in a service-based economy. As the national movement to higher paying service jobs accelerates, West Virginia lags behind that national trend as well: in 2007, 13% of America's total jobs were in the professional and business services sector, while only 8% of West Virginia's total jobs were in this category, the single greatest compositional difference between West Virginia and the rest of the nation.[178] An education gap clearly accounts for this kind of stark difference, and this too is reflected in the wage earning potential of West Virginia's workers: adjusting for inflation, college graduates in West Virginia have seen wages increase by over 14% from 1995 to 2007.[179] However, for partially college educated or high school educated workers, wages have remained flat since 1980, adjusting for inflation.[180]

The lack of a living wage will be more keenly felt by those in the service industry, particularly when the West Virginia Hospitality and Travel

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175 *Id.*

176 WORKFORCE WEST VIRGINIA, WEST VIRGINIA-EMPLOYMENT & WAGES 3RD QUARTER 2011 (2012), *available at* workforcewv.org/LMI/EW2011/q3/ew11x000.htm.

177 WORKFORCE WEST VIRGINIA, WEST VIRGINIA'S LARGEST PRIVATE EMPLOYERS IN MARCH 2012 (2012), *available at* www.workforcewv.org/lmi/prTOP100_12.pdf.

178 *See Economic and Labor Market Information,* WorkForce West Virginia (Jan. 3, 2014), http://www.workforcewv.org/lmi/usdata/national.html; *see also* BOETTNER ET AL., *supra* note 164, at 11.

179 BOETTNER ET AL., *supra* note 164, at 18.

180 *Id.*

Association itself boasts of defeating legislative raises in the state minimum wage.[181] When the tourism lobby is proud of keeping the minimum wages of its workers from rising, it is clear that there is not much wage growth potential in that industry, a disadvantage that merits the serious attention of West Virginia policymakers. Instead, lawmakers in West Virginia appear to be poised to accelerate this decrease in wages, based on their decisions in the realm of education funding, as discussed in the next section.

C. West Virginia's Wage Decrease Is Mirrored by a Decrease in Higher Education and Workforce Training Funding

Against this stark employment backdrop, it is clear that education and higher skilled jobs training is necessary to avoid becoming a state of low-wage service jobs such as cashiers and raft guides. Without such investment, West Virginia will likely fall even further behind the nation in creating high-paying service jobs that are increasingly becoming the backbone of the nation's economy. Rather than waiting tables and changing sheets as a first entry-level job, with little education, those jobs could be many state residents' *only* job. Conversely, with the higher paying service sector's reliance upon innovation, creative thinking, problem solving, and communication skills, higher education is one potential state investment that could create higher paying jobs.

However, over the past eight years, state higher education appropriations per student has fallen by almost 30%; at the same time, average undergraduate tuition for in-state students has risen by 45%.[182] Adjusting for inflation, spending on higher education per student was less in 2011 than it was in 2002.[183] And Governor Tomblin has recently proposed a further 7.5% cut to all higher education institutions across the State in 2013 alone, citing lower coal severance and gas revenues.[184] If this vicious cycle of placing college increasingly out of reach for in-state students continues, the longed-for tourism boom could become a self-fulfilling prophecy. Given tourism's emphasis on an uneducated workforce, it may become one of the *only* long-term options for the State. In tandem with higher education funding cuts, West Virginia has also reduced its state funding for workforce training programs. In the past decade, annual state funding for workforce training programs has decreased by almost

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181 *See* WEST VIRGINIA HOSPITALITY AND TRAVEL ASSOCIATION, www.wvhta.com/legislative/achievements.html (last visited Mar. 15, 2014).

182 SEAN O'LEARY & TED BOETTNER, W. VA. CTR. ON BUDGET & POLICY, THE GOVERNOR'S FY 2013 BUDGET, DIFFICULT DECISIONS AHEAD 6 (2012), *available at* http://www.wvpolicy.org/downloads/BudgetBriefFY2013_021312.pdf.

183 *Id.*

184 Phil Kabler, *Budget Cuts Mean Tuition Hikes for W.Va. Colleges*, CHARLESTON GAZETTE (Oct. 9, 2012), www.wvgazette.com/NEWS/201210090142.

70%.[185] A recent University of Kentucky study showed that workforce training programs cost Kentucky $2,510 per new job, while tax incentives, such as their 35% tax credit for building a movie theater, cost an average of $26,775 for each new job created.[186] Given that dramatic disparity in return on investment in a neighboring state, West Virginia should reexamine its job creation funding priorities. A sustainability analysis of tourism, then, should compare the number of actual jobs created through subsidies, while also redirecting to education even a small portion of the lottery advertising subsidy revenue stream.

This reallocation of job creation resources can be done in a remarkably efficient way: *doubling* the state's annual workforce investment allocation, for example, would reduce the tourism fund by only 17%. Regardless of the specific policy mix, recommended in Part IV, *infra*, the need for increased sustainability analysis of tourism investment, when compared to higher education and workforce training investment, is clear, particularly in light of West Virginia's steadily degrading job quality.

Workforce training needs are particularly acute in the booming extractive industry. Although there is no actual data on gas industry employee state residency, anecdotal reports suggest that many out-of-state workers are filling Marcellus Shale related jobs in West Virginia.[187] This can be visually confirmed by the streaming caravans of large, white drilling and water trucks on the I-79 shale corridor, many of which are from Texas, with some from Pennsylvania.[188] As is consistent with West Virginia's unquestioning embrace of easy out-of-state dollars exhibited in its collective approach to tourism, there is a constant refrain of glowing anecdotes of how much is being spent on West Virginia accommodations and in restaurants as the shale play is exploited.[189] However, West Virginia may be again settling for low-paying service jobs, when strategic investment might yield higher paying energy jobs that can be achieved with higher education and skills training.

The current path of least resistance approach to the low-hanging economic benefits of both Marcellus shale extraction and tourism indicate a potentially penny-wise, pound-foolish legislative approach. Instead, a full sustainability analysis will likely indicate the need for better long-term

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185 O'LEARY & BOETTNER, *supra* note 91.

186 Phil Kabler, *Training More Valuable than Tax Breaks*, CHARLESTON GAZETTE, June 14, 2011, at 5A.

187 *See* Ken Ward, Jr., *Marcellus Jobs: Who's Working in the Mountain State?*, CHARLESTON GAZETTE (Feb. 23, 2013), www.wvgazette.com/News/201302230079; Megan Workman, *Are Marcellus Shale Jobs 'Booming'?*, CHARLESTON GAZETTE (Jan. 28, 2012), www.wvgazette.com/News/201201270172.

188 *See* Ward, *supra* note 187.

189 BOWEN ET AL., *supra* note 6.

investment strategies in West Virginia's workforce. In absence of any existing full sustainability analyses, this Note concludes by offering some preliminary policy, statutory, and judicial recommendations.

IV. ANALYSIS AND RECOMMENDATIONS

A. *A Modest Proposal for the Tourism Trap*

With a decline in coal production of 30% projected by the end of the decade,[190] and the shale boom still unrealized in the public fisc due to record low natural gas prices,[191] the Legislature and other State leaders must be purposeful when dispensing rapidly eroding State funds. It is clear that the status quo subsidy of tourism development can be more thoroughly assessed in light of the long-term employment trends in West Virginia outlined above. Specifically, the proven efficacy of workforce training and increased higher education investment should be weighed alongside any equivalent investment in tourism subsidies. While there is little indication that tourism should *not* be pursued as a development strategy, a larger question of accountability must be answered: in terms of long-term economic development, can the full benefits, *and* opportunity costs, of public investment in tourism be quantified?

Such a question should be mandated to be studied as a Concurrent Resolution by the House of Delegates and the Senate, to be performed by either the West Virginia Development Authority or, ideally, an independent third party.

Only when that question is grappled with in a meaningful way can lawmakers accurately weigh their policy options. One option would then be to redirect a portion of tourism subsidies toward job training programs, given their better job creation potential,[192] or toward higher education institutions, given their impending budget cuts due to shortfalls in state revenue.[193]

The Legislature should also refine the two direct tourism subsidies in a way that makes them more accountable to their purpose of job creation. First, both the Tourism Development Act and the Direct Advertising Grants Program laws should be amended to require subsidy recipients to provide the State Development Authority with ongoing job creation statistics. Such information could help clarify what jobs, and what kind, are being created by subsidies, and thus indicate whether or not they are a net loss or a net gain for taxpayers.

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[190] BUREAU OF BUS. & ECON. RESEARCH, *supra* note 2.

[191] *See, e.g.*, Kris Maher & Daniel Gilbert, *Natural-Gas Boom's Flip Side*, WALL ST. J. (Nov. 25, 2012), online.wsj.com/article/SB10000872396390444592704578066964123991082.html.

[192] *See* Kabler, *supra* note 184.

[193] *See* O'LEARY & BOETTNER, *supra* note 182.

The Tourism Development Act should also be amended to clarify what qualifies as an "entertainment destination" or "tourism attraction." Doing so might avoid the further subsidy of movie theater construction, which generally creates low-wage service jobs, and which have already been proven in Kentucky to be an overpriced subsidy.[194]

In the judicial realm, the State Supreme Court should adhere more closely to the legislative purpose of the Tourism Development Act as a job creation and economic stimulus mechanism. The Court was arguably misguided by applying an "attention getting" standard when it approved almost $400,000 in taxpayer dollars to support the construction of a movie theater. By applying such a broad standard, the door is open to state subsidy of low value-added businesses, or even to simply more movie theaters. As the Court points out, the Tax Commission has not promulgated specific regulations[195] as to what projects qualify, so such a clarification of law could be made either legislatively or administratively. As the thorough dissent in that case points out, the Court also failed to sufficiently examine the West Virginia Tourism Development Act, which implies, under basic methods of statutory construction, that a standalone movie theater does not of itself qualify as an "entertainment destination center."[196]

These improvements would help to clarify the specific economic benefits of tourism, and more importantly the nature of those benefits, with an eye toward true, long-term sustainability. In doing so, the letter and requirements of tourism subsidy law could be refined, so that West Virginia's declining, post-coal revenue can be spent on the most effective methods of job creation.

B. An Important Caveat to the Perplexing Tourism Question

In examining the quantitative inputs of the tourism industry, in tandem with the qualitative employment trends in West Virginia, the overview presented here is fundamentally limited by its inability to capture the more qualitative, even subjective elements of tourism development. It is important to note these limitations here, both to qualify this Note's findings, and to indicate areas of further study that would provide clarification of the full panoply of benefits and burdens that come with a tourism economy.

Perhaps most important, it is difficult to assert that tourism employment in and of itself is inherently flawed. Tourism investment is not necessarily a zero sum endeavor, in which dollars that are directed to tourism foreclose economic development elsewhere. While "something is better than

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194 *See* Kabler, *supra* note 184.

195 Fountain Place Cinema 8, LLC v. Morris, 707 S.E.2d 859, 863 (W. Va. 2011).

196 *Id.* at 867 (Davis, J., dissenting).

nothing" falls short of a truly sustainable development strategy, amid West Virginia's anemic economy and workforce, particularly in the devastated southern counties, *any* job might be fairly described as a good job. Thus, a further demographic study should identify precisely *who* holds these tourism jobs, why, and at what opportunity cost, if any. Indeed, such a study should consider whether a growth in service jobs creates a better quality of life—with more livable communities and more aggressive movement to protect the environment for tourists—than even higher paying jobs in extractive industries or manufacturing create. Further, other, better paying jobs can certainly be created when communities are more attractive places to live and raise families; tourism could be the first step down that path. Whatever the final analysis might be, that larger demographic perspective is necessary to fully understand the sustainability implications of tourism investment.

The qualitative cultural value added by tourism, such as the increased desirability, diversity, or cultural cachet of a place, is also not captured or accounted for in this Note. Quantifying the direct and often low-paying service jobs that tourism creates does not account for the more normative process of the increased cultural and even economic attractiveness of West Virginia over time. A more rigorous sustainability analysis of this added long-term value might capture the secondary, and perhaps more economically effective, benefits of affluent citizens drawn to such popular tourist areas. In absence of tourism, those citizens may never visit or temporarily stay in West Virginia in the first place, much less permanently remain.

Dave Arnold, the founder and president of Class VI, one of the largest eco-tourism companies in West Virginia, centered in Fayetteville, acknowledged concern that many of his rafting employees might find themselves at the end of their career, with "physically degraded bodies, no savings, and huge health care liabilities."[197] However, he believes that those social costs are likely outweighed by the vibrant community that has been created by such job and recreation opportunities in Fayetteville. Indeed, when he founded his company in the 1970's, Fayetteville was a "dead coal camp."[198] Today, it boasts a number of upscale and diverse restaurants, a vibrant arts community—something Arnold believes is the single greatest indicator of a community's overall health—and high-earning artisans and telecommuting professionals.[199] He cautiously believes that it is better to foster that kind of cultural attractiveness *first* with lower paying tourism jobs than to try to create higher paying jobs amid the environmental degradation that might come in the

197 Telephone Interview with Dave Arnold, President, Class VI (Dec. 13, 2012).

198 *Id.*

199 *Id.*

absence of an eco-tourism base.[200] Tellingly, however, as Mr. Arnold looked back on his successful and widely admired entrepreneurial career, he admitted that he is not "positive that [he has] done a good thing for the community."[201] That last remark, from a booster, even poster child, of tourism in West Virginia reaffirms that any long-term sustainability analysis of tourism must somehow account for *both* positive and negative externalities that any IMPLAN-based input study could never capture.

This question of fostering cultural cachet and attractiveness also raises the difficulty of controlling for the possibly patronizing, even paternalistic, assertion that low-paying service jobs are categorically undesirable. Dr. William Reece, a professor of economics and author of *The Economics of Tourism*,[202] argues that there is no such thing as a "bad" low-skills service job when it is either a first job or is held by someone with little previous work or skills experience. Indeed, he noted that "we *all* had crummy service jobs when we started out."[203] Reece says that while it is difficult to measure, there is undeniably some value added to the economy by service jobs if they provide workers with the beginnings of a work history, something that is essential to getting a subsequent and likely higher paying job.[204]

Reece concurred that it is difficult to quantify the long-term benefits of tourism-related service jobs, and the extent to which they actually "add value" to the economy beyond IMPLAN measurable inputs remains hard to measure.[205] However, Dr. Reece nonetheless questioned this Note's proposition that low-paying service jobs necessarily "replace" high-paying manufacturing jobs.[206] It is just as possible that the people who held those manufacturing jobs left West Virginia, or were close to retiring anyway.[207] Again, a full sustainability analysis of the risk of this "trading down" from manufacturing to service jobs requires further demographic analysis of who now holds these service jobs, why, and additionally, what value-added, positive externalized benefits may not be captured by this Note.

Lastly, another demographic caveat that might call into question the strength of the proposals offered above is the currently unknown likelihood of a worker staying in West Virginia after higher education and higher skills are attained. Anecdotal reports and observations of "brain drain" abound in West

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200 *See id.*

201 *Id.*

202 WILLIAM S. REECE, THE ECONOMICS OF TOURISM (Vernon Anthony et al. eds., 2010).

203 Telephone Interview with Dr. William Reece, W. Va. Univ. Professor (Nov. 10, 2012).

204 *Id.*

205 *Id.*

206 *Id.*

207 *Id.*

Virginia. Thus, further demographic study is needed to determine whether sufficient incentive exists for skilled workers to stay here in the first place. Indeed, there is a sociological "chicken-and-egg" conundrum here that must be studied further. Which option is more effective at retaining skilled, higher paid workers: having a unique cultural sense of place first, that tourism can help preserve and foster, and thus retain citizens, or providing training and education *first*, so that those unique places can *then* be created by an entrepreneurial workforce? That is a question that cannot be answered in this report, and moreover might not be answered in West Virginia for many more years.

Clearly, these issues, and this report, provide more questions than answers. Any further economic analysis of tourism in West Virginia should be buttressed by fuller sustainability metrics that are likely to be just as qualitative as they are quantitative. Again, those sociological and demographic studies must include exactly *who* fills tourism jobs that are created, whether they making a living wage, what is their age and previous employment, their education level, their prospects for future employment, and their general social mobility and ability to add value back into the economy and cultural landscape. Until we grapple with these metrics, the true value of tourism will remain unknown.

V. CONCLUSION

This Note began with an overview of the economic-centric view of tourism in both the United States and in West Virginia, with an explanation of how a sustainability analysis can provide a more accurate picture of tourism's long-term benefits and potential burdens. It then analyzed West Virginia's subsidies of tourism, including relevant statutory and case law. The larger employment trends of West Virginia, in which higher paying manufacturing jobs are being replaced by lower paying service jobs, informed this Note's discussion of whether or not the statutory subsidy of tourism has verified economic merit. Accordingly, this Note calls into question the wisdom of subsidizing the creation of more tourism service jobs. Specifically, when simultaneous cuts are being made to State job training and higher education, this Note cautions that lawmakers may be unintentionally creating low-wage jobs to the exclusion of creating higher paying ones.

Based on those informed observations, this Note provides recommendations for how to more wisely assess tourism's true role in the State economy, and how to refine the subsidy allocation process. Lastly, it acknowledged the difficulty in quantifying the often qualitative benefits of tourism, particularly in the way it may very well increase the desirability of the State as a place to grow up in, move to, or remain. Indeed, without a full sustainability analysis that captures those more elusive metrics, the final value of tourism will remain elusive as well.

Regardless, given the echo chamber of tourism promotion and boosterism explored in this Note, it is fair to call into question the practice of quantifying only the economic inputs of tourism. West Virginia has clearly fallen into the trap of economics-only analysis of tourism, and doing so has implications for economic analyses beyond tourism: if tourism benefits are as exaggerated as this Note suggests, it is reasonable to assume that other industries, ones with exponentially larger interest groups, also exhibit a similar cycle of self-reinforcing delusions of grandeur and economic indispensability.

Thus, lawmakers should be more demanding of the metrics they rely upon, lest mistaken assumptions continue to be codified in statute.[208] Until a rigorous sustainability analysis is undertaken, West Virginia will never know—as it stands at the precipitous end of the coal era—whether the next major phase of state development will only bring further economic malaise under a different guise, or if there truly is a sustainable way forward to be found.

Any way forward must include a rethinking of the State's approach to re-growing its economy in the post-coal world. On one hand, the State can hope for, and settle for, the creation of low-paying tourism jobs. On the other hand, the State can aspire to the creation of the higher paying service jobs enjoyed by the rest of the nation, by investing instead in higher education and skilled jobs training. If such an approach were embraced by lawmakers, the very purpose of law, to embody in writing the best aspirations and values of our society, will be achieved. Only then, when the law of the State is aligned with the innate potential of her citizens, will West Virginia become truly, sustainably, "open for business."

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208 *See supra* Part II.E.

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