THERE'S NOTHING WRONG WITH MAYBERRY: USING THE KENTUCKY COAL FIELDS ENDOWMENT FUND TO PROMOTE LOCALIZED ECONOMIES IN EASTERN KENTUCKY

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I. INTRODUCTION

The Kentucky Coal Fields Endowment Fund consisted of fifteen million dollars for coal producing counties' economic diversification, until it did not.[1] "Does the Governor agree with these changes?" asked Senator Morgan McGarvey (D–Jefferson), clearly concerned that amendments to the biennial budget were occurring on the last day of the legislative session without possible recourse to a line-item veto.[2] Committee chair Senator Christian McDaniel (R–Kenton) replied, "A lot of these changes were requested by the Executive branch and their agencies."[3] This exchange occurred during the last Senate Appropriations and Revenue Committee meeting of the Kentucky General Assembly's 2018 regular session.[4] The matter up for discussion was a last-minute committee substitute to a House telecommunications bill, which completely stripped the bill of its original language and replaced it with "language amending the state/executive branch budget."[5]

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* J.D., December 2019, University of Louisville Brandies School of Law; Political Science (B.S.), August 2017, University of Kentucky; Graduate, May 2014, Gatton Academy of Mathematics & Science at Western Kentucky University. I would like to dedicate my note to the wonderful people of eastern Kentucky and the beautiful region they live in. I would like to thank the ones who helped me explore the possibilities for eastern Kentucky and who relentlessly strive to see prosperity throughout the Commonwealth. I would especially like to thank my family and friends for their constant support as I continue to work toward my goals.

[1] OFFICE OF STATE BUDGET DIR., 2016–2018 BUDGET OF THE COMMONWEALTH: VOLUME I 28 (2016), https://osbd.ky.gov/Publications/Documents/Budget%20Documents/2016-2018%20Budget%20of%20the%20Commonwealth/1618BOCVolumeI%20-%206-30-16.pdf. The Kentucky Coal Fields Endowment Fund was funded in 2016 with $7.5 million per year. *Id.*

[2] *Senate Appropriations and Revenue Committee*, Video in *Archived Legislative Coverage*, KY. EDUC. TELEVISION 14:10–14:26 (Apr. 14, 2018), https://www.ket.org/legislature/?archive&program=WGAOS&nola=WGAOS+019286.

[3] *Id.* at 14:30–14:34.

[4] *Id.* at 11:50–11:57 (Senator McGarvey stating, "I do wish we had seen this bill and these changes before 10 a.m. on the last day of the session, but here we are").

[5] *House Bill 265*, KY. LEGIS. RES. COMMISSION, https://apps.legislature.ky.gov/record/18rs/hb265.html (last updated Jan. 16, 2019, 3:00 PM).

Although replacing the entirety of a bill with nongermane language raises its own political questions, amending an enacted biennial budget the day after its passage invites inquiry. Especially since it was the same budget that had enough support to override Governor Matt Bevin's veto.[6] Yet, as exemplified by the senators' exchange during committee, the Republican caucus changed the budget to reflect the Governor's recommendations.[7] Their actions depleted the Kentucky Coal Fields Endowment Fund.[8]

The Kentucky Coal Fields Endowment Fund was codified in 2017 with hopes of aiding eastern Kentucky counties severely impacted by decreasing coal production.[9] The Kentucky Coal Fields Endowment Authority was tasked with ensuring that appropriations from the endowment fund "support [projects] through funding efforts to diversify the economy of the coalfields within Kentucky."[10] The Authority would invest in projects related to "1. [e]conomic development; 2. [p]ublic infrastructure, water, and wastewater; 3. [p]ublic health and safety; and 4. [i]nformation technology and access."[11] Eligible counties for such expenditures were counties from the Eastern and Western Kentucky Coalfields that produced coal in 2016 or 2017.[12] While the Fund may include counties from both coal producing regions, this Note solely focuses on those counties in the Eastern Kentucky Coalfield. The

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[6] Governor Bevin vetoed the appropriations bill on April 9, 2018; the veto was overridden in the House by a 66–28 vote and in the Senate by a 26–12 vote on April 13. *House Bill 200*, KY. LEGIS. RES. COMMISSION, https://apps.legislature.ky.gov/record/18rs/hb200.html (last updated Jan. 16, 2019, 3:00 PM). The proposed amendment to House Bill 265—which originated as a telecommunications bill—that would gut the Kentucky Coal Fields Endowment Fund was introduced the very next day. *See Senate Appropriations and Revenue Committee*, *supra* note 2.

[7] The fact that the changes originated within the Republican Caucus is implied by Senator McGarvey's comment in committee: "I do wish we had seen this bill and these changes before 10 a.m. on the last day of the session, but here we are." Senator McGarvey is a Democratic senator within the Republican-controlled senate. The caucus meetings within the General Assembly are held privately, so no public record exists unless statements are leaked by members. *See Senate Appropriations and Revenue Committee*, *supra* note 2, at 11:50–11:57, 14:30–14:34; *see also* Amye Bensenhaver, *Kentucky Lawmakers Ignore Open Meetings Law with New Restrictions*, COURIER J. (Jan. 14, 2019, 5:24 PM), https://www.courier-journal.com/story/opinion/contributors/2019/01/14/kentucky-general-assembly-violates-open-meetings-law/2574729002/.

[8] *See* H.B. 265, 2018 Gen. Assemb., Reg. Sess. (Ky. 2018) (S. Comm. Substitute 1) (as became law Apr. 27, 2018) ("No funds shall be transferred to the Kentucky Coal Fields Endowment Authority.").

[9] *See generally* John Cheves, *Bill Would Put $7.5 Million a Year in 'Trust Fund' to Help Kentucky's Coal Regions*, LEXINGTON HERALD LEADER (Mar. 7, 2017), https://www.kentucky.com/news/politics-government/article136943003.html.

[10] KY. REV. STAT. ANN. § 42.453(2) (LEXIS through Chapter 1 of the 2020 Reg. Sess.).

[11] *Id.* § 42.453(2)(a).

[12] *See id.* § 42.454(1)(e) ("'Eligible counties' means counties of the Commonwealth of Kentucky participating in the Local Government Economic Development Fund on June 29, 2017, and those that participated on January 1, 2016"). Participation in the Local Government Economic Development Fund is based on the coal severance and processing taxes that are collected annually then dispersed from the general fund to the Local Government Economic Development Fund. *See id.* § 42.4582(2)(a).

seventeen eligible counties within that region are: Bell, Breathitt, Floyd, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Magoffin, Martin, Perry, Pike, Pulaski, and Whitley.[13] The governor has the power to appoint the Authority, but, whether due to a calculated political decision or mere oversight, Governor Bevin never appointed any members before the Fund was expropriated.[14] Thus, no action plan is known to exist.

The primary purpose of this Note is to provide the Kentucky Coal Fields Endowment Authority, once the endowment is restored, with a model plan to implement the stated purposes in eligible eastern Kentucky counties. This Note also aims to serve as a guide for the Kentucky General Assembly to continue to improve the lives of citizens of the region by analyzing preexisting programs within the Commonwealth and current policy recommendations. To achieve these objectives, this Note will analyze the statutory language and the legislative intent of the Kentucky Coal Fields Endowment Fund. It will also assess the impact of current Kentucky statutes that affect eastern Kentucky's workforce, welfare, infrastructure, and economy. Ultimately, the goal of this Note is to help those chronically impoverished in eastern Kentucky by offering realistic policy solutions that will improve their quality of life, in addition to promoting economic development.

Furthermore, this Note hopes to enlighten others about the plight in eastern Kentucky. Successful policy must not only make effective use of funds, it must also be sensitive to the cultural and psychological perceptions in eastern Kentucky that contextualize the very issues that policy measures

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[13] KY. ENERGY & ENV'T CABINET, KENTUCKY COAL FACTS 58 (17th ed. 2017), https://eec.ky.gov/Energy/Coal%20Facts%20%20Annual%20Editions/Kentucky%20Coal%20Facts%20-%2017th%20Edition%20(2017).pdf [hereinafter KENTUCKY COAL FACTS] (listing coal producing counties which participated in the Local Government Economic Development Fund in 2016, making them eligible counties. Twenty-five counties severed coal during this period including seventeen from the Eastern Kentucky Coalfields and eight from the Western Kentucky Coalfields. Logan County is incorrectly listed under "Eastern Kentucky Coal Producing Counties, 2016"); KY. ENERGY & ENV'T CABINET, KENTUCKY QUARTERLY COAL REPORT: JANUARY TO MARCH 2017 2–3 (2017), https://eec.ky.gov/Energy/News-Publications/Quarterly%20Coal%20Reports/2017-Q1.pdf (listing coal producing counties which participated in the Local Government Economic Development Fund in Quarter 1 of 2017, making them eligible counties. Twenty counties severed coal during this period, including thirteen from the Eastern Kentucky Coalfield and seven from the Western Kentucky Coalfield); KY. ENERGY & ENV'T CABINET, KENTUCKY QUARTERLY COAL REPORT: APRIL TO JUNE 2017 2–3 (2017), https://eec.ky.gov/Energy/News-Publications/Quarterly%20Coal%20Reports/2017-Q2.pdf (listing coal producing counties which participated in the Local Government Economic Development Fund in Quarter 2 of 2017, making them eligible counties. Twenty-two counties severed coal during this period, including fifteen from the Eastern Kentucky Coalfield and seven from the Western Kentucky Coalfield). Seventeen different counties from the Eastern Kentucky Coalfield produced coal from January 1, 2016 through the end of June 2017. *Id.*

[14] *See* KY. REV. STAT. ANN. § 42.454(2).

should seek to correct.[15] Such issues are beyond the scope of this Note, but they bear mentioning to remind readers that behind every devastating statistic there's a face, a name, and a life it accompanies.

Notions that eastern Kentucky should be given up on are destructive not only to the region but to the entire Commonwealth. Stereotypes defining the region mask the multifaceted issues of Appalachia.[16] Kentuckians seem to forget that Kentucky is first, and foremost, a commonwealth which "answers the needs, practical as well as social and spiritual, of its members – among them the need to need one another."[17] Thus, the answer to eastern Kentucky's difficulty is for it to persevere, with the rest of Kentucky ready to aid. Eastern Kentuckians deserve, like every Kentuckian, to have the ability to lead a successful life, whether or not the coal industry improves.[18]

This Note examines how the coal industry encapsulated eastern Kentucky creating a monolithic economy and what incentives, economically and societally, must be provided to improve the region. Section II of this Note discusses how the coal industry only provided short-term benefits to the people of eastern Kentucky since its inception and, without providing long-term economic sustainability, led to chronically impoverished communities. Section III analyzes multiple approaches to improve the health of eastern Kentuckians and stimulate the economy of the region. Section IV proposes a model plan for the Kentucky Coal Fields Endowment Authority to follow

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15 *See* J.D. VANCE, HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS 145 (2016), (stating that the Appalachian elegy "is a sociological one . . . but it is also about psychology and community and culture and faith"); *id.* at 147 (discussing the destructive victimization mentality of working-class whites in Appalachia: "We talk about the value of hard work but tell ourselves that the reason we're not working is some perceived unfairness: Obama shut down the coal mines, or all the jobs went to the Chinese. These are lies we tell ourselves to solve the cognitive dissonance – the broken connection between the world we see and the values we preach."); *id.* at 194 ("What separates the successful from the unsuccessful are the expectations that they had for their own lives. Yet the message of the right is increasingly: It's not your fault that you're a loser; it's the government's fault . . . . This is how low the cultural expectations of working-class white Americans have fallen. We should hardly be surprised that as attitudes like this one spread, the number of people willing to work for a better life diminishes.").

16 Stacie Nicole Fugate et al., *Opinion: Eastern Kentucky Stereotypes Don't Add Up*, COURIER J. (July 26, 2017 10:53 PM), https://www.courier-journal.com/story/opinion/contributors/2017/07/27/eastern-kentucky-stereotypes-dont-add-up-comment/505392001/ ("Authors across the nation have portrayed people on our Main Streets as having "drugged out eyes," or "too much alcohol and Kentucky" in our voices to be understood. There are also the usual ones about how we have no teeth or are too poor to afford shoes.").

17 WENDELL BERRY, THE ART OF THE COMMONPLACE: THE AGRARIAN ESSAYS OF WENDELL BERRY 63 (Norman Wirzba ed., 2002).

18 Eastern Kentuckians have a tendency to want to live where they were raised. *See* Parija Kavilanz, *How this Kentucky Coal Town is Trying to Bring Its Economy Back to Life*, CNN BUS. (Nov. 8, 2017), https://money.cnn.com/2017/11/08/news/economy/hazard-kentucky-coal-jobs/index.html (quoting Tonita Goodwin, director of Hazard-Perry Economic Development Alliance: "In Appalachian communities, families resist leaving their towns, no matter how difficult things get.").

when deciding how to appropriate monies from the Endowment Fund to eligible eastern Kentucky counties.

II. BACKGROUND

The economy in eastern Kentucky revolved around coal production for over a century, with coal-based jobs employing thousands of miners and affecting the region through its ancillary benefits.[19] But over the last ten years eastern Kentucky has witnessed a drastic downturn in the coal industry, which caused massive layoffs and decline across the entire region.[20] The Kentucky Coal Fields Endowment Fund was created to invest in those counties that were severely impacted by the changing economic landscape.[21]

A. Possible Relief for Eastern Kentucky

In 2017, the Kentucky General Assembly passed House Bill 156 codifying the Kentucky Coal Fields Endowment Fund and creating its Authority.[22] The Kentucky Coal Fields Endowment Authority, sponsored by eastern Kentucky senators Brandon Smith and Robert Stivers, will apportion $7.5 million from the General Fund every fiscal year to counties that severed coal in 2016 and 2017 for projects pertaining to: (1) economic development; (2) public infrastructure, water, and wastewater; (3) public health and safety; and (4) information technology development and access.[23] The Authority's overarching duty is "to support through funding efforts [diversifying] the economy of the coal fields within Kentucky."[24] Such diversification is hoped to alleviate the economic downturn in Kentucky's coalfields caused by the decrease in coal production and employment.

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19 *See* KENTUCKY COAL FACTS, *supra* note 13, at 3.

20 *See id.* at 60–61, 64–65, 70–73, 78–89, 92–95. 102–07, 114–15 (showing historical data trending drastically downward on employment and production for coal producing counties in the region).

21 *See generally* Cheves, *supra* note 9.

22 H.B. 156, 2017 Gen. Assemb., Reg. Sess. (Ky. 2017). The Kentucky Coal Fields Endowment Fund was first added to the state budget in 2016. *See* OFFICE OF STATE BUDGET DIR., *supra* note 1, at 28 ("Kentucky Coal Fields Endowment Fund, a new program to be administered by the Department for Local Government: $7,500,000 each fiscal year."). Senators Smith and Stivers enrolled Senate Bill 215 in the 2017 legislative session to codify the budget addition. S.B. 215, 2017 Gen. Assemb., Reg. Sess. (Ky. 2017), *see also Senate Bill 215*, KY. LEGIS. RES. COMMISSION, https://apps.legislature.ky.gov/record/17rs/sb215.html. During the session, language from Senate Bill 215 was incorporated into House Bill 156, a bill filed by a junior eastern Kentucky representative, as an amendment to an eastern Kentucky tourism bill. *See* H.B. 156; S.B. 215. *See also House Bill 156*, KY. LEGIS. RES. COMMISSION, https://apps.legislature.ky.gov/record/17rs/hb156.html. Upon passage, the bill created both the Mountain Recreation Authority and the Kentucky Coal Fields Endowment Fund. *See* H.B. 156.

23 KY. REV. STAT. ANN. § 42.453(2)(a) (LEXIS through Chapter 1 of the 2020 Regular Session).

24 *Id.* § 42.453(2).

Unfortunately, due to budget shortfalls and gubernatorial backlash, on the last day of the 2018 regular session the Senate Appropriations Committee defunded the Endowment Fund to cushion mountain schools from the financial impact felt from the decrease in coal severance taxes.[25] Senate Committee Substitute 1 (SCS1) amended House Bill 265, originally a telecommunications appropriation bill, to remove its original text and alter the budget bill enacted the previous day.[26] SCS1 stated in its first section, "No funds shall be transferred to the Kentucky Coal Fields Endowment Authority."[27] The complete removal of funding is devasting to the efforts to aid eastern Kentucky.

Notwithstanding the budget issues in 2018, the Kentucky Coal Fields Endowment remains within the Kentucky Revised Statutes and will hopefully be appropriated for during the next budget session in 2020.[28] Once appropriated, seventeen counties in eastern Kentucky will be eligible for project funding.[29] The sponsors of this legislation drafted the Endowment Fund with eastern Kentucky's specific hardships in mind, which are defined by the region's unique history and culture in Appalachia.[30]

B. How History Shaped Eastern Kentucky and the Coal Industry

Common attitudes associated with eastern Kentucky, such as the dislike of outsiders and the intense belief in personal property rights, stem from the region's history, including being taken advantage of by venture capitalists when coal mining first began. Before Kentucky became an independent state, "[t]hose who could not afford the long patenting process [in Virginia] occupied and improved sections of land as squatters."[31] Many such eastern

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25 *See* KY. EDUC. TELEVISION, *supra* note 2, at 4:29–4:42 (Committee Chair, Senator McDaniel, describing the action of the amendment as taking "seven million dollars which was previously in the coal endowment fund and . . . direct[ly] appropriat[ing] it to school systems who have been adversely affected by the . . . loss in the unmined minerals tax"); H.B. 265, 2018 Gen. Assemb., Reg. Sess. (Ky. 2018), https://apps.legislature.ky.gov/record/18rs/hb265.html.

26 H.B. 265.

27 H.B. 265, 2018 Gen. Assemb., Reg. Sess. (Ky. 2018) (Sen. Comm. Substitute 1).

28 *See* KY. REV. STAT. ANN. § 42.453.

29 *See generally* KENTUCKY COAL FACTS, *supra* note 13 and accompanying text.

30 *See* KY. EDUC. TELEVISION, *supra* note 2 at 13:21–13:40. The Bill's original sponsor, Senator Brandon Smith, described the Kentucky Coal Fields Endowment Fund's purpose during the hearing that appropriated its monies elsewhere: "[t]he endowment was set up to help us in the mountains for crises."). *Id.*

31 Stephanie M. Lang, *"Titles Must Be Perfect": The Broad Form Deed, Politics, and Landownership in Eastern Kentucky at the Turn of the Twentieth Century*, 113 REG. KY. HIS. SOC. 27, 35 (2015).

Kentucky residents claimed those lands to create homes for their families through adverse possession.[32]

The advent of industrialization brought with it the possibility of using eastern Kentucky's lands not only for homesteading but for the resources underneath the soil.[33] In 1886, *Big Sandy News* in Louisa heralded, "[o]ur people have great reasons to hope for the early development of riches of the Sandy Valley. Capitalists are flocking here; some with an eye to the minerals with which our hills abound."[34] The newspaper went on to call for solidarity in the region: "The disclosure of these resources is something which materially interests every individual in the Sandy Valley. Therefore, let each of us make, if necessary, some sacrifice in order that this development may be started at once."[35] Little did eastern Kentuckians know how large a sacrifice would be necessary for the coal underneath their homes.

During this time, the conveyance of choice for mineral rights was the broad form deed.[36] These property conveyances severed "mineral rights from the surface estate and . . . ultimately allowed investors and businessmen to not only extract resources but influence the economic, legal, and political landscape of the mountains."[37] The broad form deed created its own type of hardship on eastern Kentucky with only short-term benefits for the people. The New York Times noted the benefits of the broad form deed: "To the isolated mountaineer the 25 to 50 cents an acre he was offered for mineral rights was a small fortune. He had no way of knowing the value of coal beneath his corn and tobacco fields."[38] Similarly, most eastern Kentuckians could not foresee or did not understand the expansive rights that the broad form deed would vest in the mining companies as Kentucky courts construed the phrase "in any and every manner that may be deemed necessary or convenient for mining, and therefrom removing."[39]

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[32] *Id.* at 36.

[33] *See generally* LOWELL H. HARRISON & JAMES C. KLOTTER, A NEW HISTORY OF KENTUCKY 307 (1997).

[34] *Big Sandy News, Sept. 23, 1886,* KY. DIGITAL NEWSPAPER PROGRAM, https://kentuckynewspapers.org/catalog/xt7kkw57fq9s?.

[35] *Id.*

[36] *See* Lang, *supra* note 31, at 28 ("From the 1880s until the 1920s, the broad form deed was used by mineral speculators to acquire rights to the profitable mineral wealth of Appalachia.").

[37] *Id.* at 27.

[38] James Brabscome, *Appalachia – Like the Flayed Back of a Man*, N.Y. TIMES (Dec. 12, 1971), https://www.nytimes.com/1971/12/12/archives/appalachia-like-the-flayed-back-of-a-man-like-the-flayed-back-of-a.html.

[39] Buchanan v. Watson, 290 S.W.2d 40, 42 (Ky. 1956). *See also* Lang, *supra* note 31, at 56 n.83 (2015) ("[*Buchanan*] essentially opened the door for strip mining in Kentucky under a broad form deed, even though the type of mining was not originally considered at the time many deeds were signed from the 1880s through the 1910s. Decisions such as *Buchanan* ultimately laid the foundation for mountaintop

Using the broad form deed as a mechanism to secure property rights, the economic landscape of the mountains began to change from an agrarian lifestyle to mining operations.[40] "Although local elites and newspapers hailed the arrival of railroads and industry, many small farmers soon witnessed the destruction of their land and livelihood as coal companies that purchased the mineral rights began mining operations."[41] The end of an agriculturally-based economy in eastern Kentucky marked the birth of coal dominance. By 1911, the Eastern Kentucky Coalfield produced almost 7 million tons of coal and became Kentucky's highest producing region.[42]

C. The Downfall of the Coal Industry and the Current Situation in Eastern Kentucky

During the twentieth century, the coal industry fluctuated depending on national and global markets known as "booms" and "busts," yet coal mining continued to dominate the region as an employment source and the economy's main contributor.[43] It was not until the so-called "War on Coal" began in 2009 that the entire economy of eastern Kentucky began to spiral into a rapid downfall.[44] Under the Obama Administration, the War on Coal began to decrease the amount of coal used for the nation's electricity.[45] The War on Coal increased regulations on the coal industry, driving up prices and essentially creating the product's ultimate downfall.[46] The regulations enacted by the Environmental Protection Agency have raised companies'

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removal . . . [and] naming the mineral owner's estate as dominant."); Case v. Elkhorn Coal Co., 276 S.W. 573, 574 (Ky. 1925) ("Clearly the [mineral owner] has the paramount right to the use of the surface in the prosecution of its business for any purpose of necessity or convenience, and of this it is to be the judge, unless it exercises this power oppressively, arbitrarily, wantonly, or maliciously, [the land owner] cannot complain."); Treadway v. Wilson, 192 S.W.2d 949, 950 (Ky. 1946) (quoting *Case* to uphold the use of the broad form dead); Blue Diamond Coal Co. v. Neace, 337 S.W.2d 725, 727–28 (Ky. 1960) ("[I]n cases where the mineral deed expressly confers upon a grantee the right to use the surface in 'any manner that may be deemed necessary and convenient,' as it does in this case, it was uniformly held long before 1945 that the mineral owner is not confined in its use of the surface to 'that which in the opinion of a jury would be absolutely necessary' but on the contrary, is liable only in the event of an arbitrary, wanton or malicious exercise of that right."); Martin v. Kentucky Oak Mining Co., 429 S.W.2d 395, 399 (Ky. 1968) (upholding *Buchanan*).

40 *See* Lang, *supra* note 31, at 28 ("As environmentally disruptive mining operations began . . . farming became impossible in many situations.").

41 *Id.* at 35.

42 KENTUCKY COAL FACTS, *supra* note 13, at 11 (stating that in 1911 "[c]oal production in Eastern Kentucky exceed[ed] 6.9 million tons, displacing Western Kentucky as Kentucky's leading coalfield").

43 *See id.* at 6–9.

44 *See generally* Noah R. Friend, *Collateral Damage: The Impact of Obama-Era Regulations on the Eastern Kentucky Coalfields*, 9 KY. J. EQUINE AGRIC. & NAT. RESOURCES L. 441 (2016–2017).

45 *See id.* at 460–61.

46 *See id.* at 455–61.

expenses through mandatory environmental impact studies and permitting processes which can take years to complete.[47] The ultimate goal of the War on Coal was accomplished by fighting the industry on two fronts: raising the price of production and regulating usage.[48]

Coal production in eastern Kentucky has decreased over eighty-one percent since 2008.[49] This decrease has understandably resulted in job losses.[50] In 2008, coal mines in Eastern Kentucky employed 14,412 people on average; the average employment in 2018 was only 3,964 people.[51] The loss of over ten thousand jobs in the rural region is devasting and has led to high unemployment in those counties.[52]

Since 2009, the Eastern Kentucky Coalfields have had the highest unemployment rates in Kentucky.[53] In particular, Magoffin County's unemployment rate, ranging from 14% to 20.5% over the last nine years, ranks worst in the Commonwealth.[54] Despite Kentucky's overall unemployment rate continuing to drop the past few years, the rates in eastern counties remain high.[55] In 2017, all eastern Kentucky coalfield counties had unemployment rates above the state average with two counties, Leslie and

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47 *See generally id.*

48 *See* KENTUCKY COAL FACTS, *supra* note 13, at 9.

49 The change in production is calculated by subtracting eastern Kentucky's total production in 2018 (16,922,960 tons) from 2008's annual production (90,971,424 tons) then dividing by 2008's annual production. This calculation results in a change of –81.3 percent. *See* KY. ENERGY & ENV'T CABINET, KENTUCKY Q4/2018 COAL REPORT: OCTOBER TO DECEMBER 2019 5 (2019), https://eec.ky.gov/Energy/News-Publications/Quarterly%20Coal%20Reports/2018-Q4.pdf [hereinafter KENTUCKY Q4/2018 COAL REPORT]; *see also* KY. ENERGY & ENV'T CABINET, KENTUCKY QUARTERLY COAL REPORT: JANUARY TO MARCH 2015 5 (2015), https://eec.ky.gov/Energy/News-Publications/Quarterly%20Coal%20Reports/2015-Q1.pdf.

50 *See* sources cited *supra* note 49.

51 KENTUCKY Q4/2018 COAL REPORT, *supra* note 49 at 5; KENTUCKY QUARTERLY COAL REPORT: JANUARY TO MARCH 2015, *supra* note 49, at 5.

52 *See* Glenn Puit, *Highest Unemployment in Eastern Ky.*, DAILY INDEPENDENT (Sept. 4, 2017), https://www.dailyindependent.com/news/highest-unemployment-in-eastern-ky/article_950da80c-9110-11e7-ab3f-57d12138a14c.html.

53 *See Local Area Unemployment Statistics Map*, U.S. BUREAU OF LAB. STAT., https://data.bls.gov/lausmap/showMap.jsp;jsessionid=6EF4CAC524AB01085C30DC1FA2474D38._t3_07v (at the top of the map, select "States (not seasonally adjusted)"; click Kentucky on the map; select the appropriate year in the "Select Year" dropdown menu; choose "Annual" in the "Select Month" dropdown menu; and then click "Draw Map" button) (last visited Feb. 8, 2019).

54 *See id.* (showing Magoffin County's unemployment rate has decreased in current years but still holds Kentucky's highest unemployment rate at 16.3% in 2017).

55 *See id. See also* Anna Baumann, Opinion, *Beyond Kentucky' Low Unemployment Rate: How Workers are really faring this Labor Day*, COURIER J. (Aug. 30, 2019), https://www.courier-journal.com/story/opinion/2019/08/30/labor-day-unemployment-low-but-how-kentucky-workers-fairing/2133770001/ ("While more people are employed than before the recession in the central and northern regions of the state, Eastern Kentucky and other rural areas are still dealing with huge job losses. In Harlan County, for instance, 37% fewer people are employed than a decade ago.").

Magoffin, at 10.2% and 16.3%, respectively—more than double Kentucky's average.[56]

The crisis is exacerbated by high unemployment of individuals lacking education and sufficient, transferable training to find other opportunities.[57] This situation has led to decreased tax revenues and declining populations as residents leave the region to find employment.[58] The U.S. Census Bureau Population Division estimates that from the 2010 census to July 2017, eleven counties lost at least 6% of their population, with Martin County estimated

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[56] *See Local Area Unemployment Statistics Map*, *supra* note 53.

[57] According to the most recent census date, all counties besides Pulaski County had high school graduation rates less than 80% for residents over twenty-five years of age. *See Quick Facts: Knott County, Kentucky; Johnson County, Kentucky; Harlan County, Kentucky; Floyd County, Kentucky; Breathitt County, Kentucky; Bell County, Kentucky*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/knottcountykentucky,johnsoncountykentucky,harlancountykentucky,floydcountykentucky,breathittcountykentucky,bellcountykentucky/PST045218 (last visited Feb. 10, 2019) (showing high school graduation rates for person ages twenty-five years or higher for Bell County was 67.2%, Breathitt County was 72.8%; Floyd County was 74.9%, Harlan County was 71.4%; Johnson County was 79.7%, and Knott County was 73.4%); *Quick Facts: Magoffin County, Kentucky; Letcher County, Kentucky; Leslie County, Kentucky; Lawrence County, Kentucky; Laurel County, Kentucky; Knox County, Kentucky*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/magoffincountykentucky,letchercountykentucky,lesliecountykentucky,lawrencecountykentucky,laurelcountykentucky,knoxcountykentucky/PST045218 (last visited Feb. 10, 2019) (showing high school graduation rates for person ages twenty-five years or higher for Knox County was 68.0%, Laurel County was 78.9%; Lawrence County was 76.7%, Leslie County was 68.2%; Letcher County was 75.0%, and Magoffin County was 70.6%); *Quick Facts: Whitley County, Kentucky; Pulaski County, Kentucky; Pike County, Kentucky; Perry County, Kentucky; Martin County, Kentucky*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/whitleycountykentucky,pulaskicountykentucky,pikecountykentucky,perrycountykentucky,martincountykentucky/PST045218 (last visited Feb. 10, 2019) (showing high school graduation rates for person ages twenty-five years or higher for Martin County was 72.6%, Perry County was 76.6%; Pike County was 75.6%, Pulaski County was 81.4%; and Whitley County was 79.1%). While it is believed that miners can transfer their skills to other industries, such as aerospace and manufacturing, those industries must exist in eastern Kentucky for most former miners to use the value of their skills. Retraining for other employment opportunities is also required in many cases. Retraining programs are available in the region, but only a small percentage of the unemployed miners seem to be taking advantage of those programs. *See generally* Parija Kavilanz, *How This Kentucky Coal Town is Trying to Bring Its Economy Back to Life*, CNN BUSINESS (Nov. 8, 2017), https://money.cnn.com/2017/11/08/news/economy/hazard-kentucky-coal-jobs/index.html.

[58] *See infra* note 59 and accompanying text.

to have lost 11.4%.[59] During the same time period, only three counties (Laurel, Pulaski, and Whitley) increased their populations.[60]

The Kentucky State Data Center (KSDC) projects that all counties of the region (besides Laurel, Pulaski, and Whitley) will continue to decrease in population over the next few years.[61] Unless drastic change occurs, KSDC projects that most of these counties will lose at least twenty percent of their populations by 2040, with Leslie County estimated to lose over thirty-three percent (from 11,310 residents in 2010 to 7,537 residents in 2040).[62] By then,

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[59] The change in population is calculated by subtracting each respective county's 2017 population estimate from its Census population and then dividing by their Census population. Bell County's population decreased by 6.3%; Breathitt County's population decreased by 6.7%; Floyd County's population decreased by 8.1%; Harlan County's population decreased by 8.8%; Johnson County's population decreased by 3.3%; Knott County's population decreased by 6.5%; Knox County's population decreased by 2.1%; Laurel County's population increased by 2.3%; Lawrence County's population decreased by 0.9%; Leslie County's population decreased by 8.6%; Letcher County's population decreased by 8.9%; Magoffin County's population decreased by 6.0%; Martin County's population decreased by 11.4%; Perry County's population decreased by 7.5%; Pike County's population decreased by 9.4%; Pulaski County's population increased by 2.2%; and Whitley County's population increased by 1.6%. *See Total Population (2010–2017)*, KY. STATE DATA CTR. (Mar. 22, 2018), http://www.ksdc.louisville.edu/wp-content/uploads/2018/05/CO-EST2017_TOTAL-POP.xls.

[60] *See id.*

[61] *See* MATT RUTHER, TOM SAWYER & SARAH EHRESMAN, PROJECTIONS OF POPULATIONS AND HOUSEHOLDS: STATE OF KENTUCKY, KENTUCKY COUNTIES, AND AREA DEVELOPMENT DISTRICTS 2015–2040, at 12–14 (2016), http://www.ksdc.louisville.edu/wp-content/uploads/2016/10/projection-report-v16.pdf.

[62] The change in population is calculated by subtracting each respective county's population projection from its 2010 Census population and then dividing by its 2010 Census population. Bell County's population is projected to change by -8.0% from 2010–2020, -16.3% from 2010–2030, and -25.5% from 2010–2040; Breathitt County's population is projected to change by -7.6% from 2010–2020, -19.0% from 2010–2030, and -31.6% from 2010–2040; Floyd County's population is projected to change by -8.4% from 2010–2020, -18.1% from 2010–2030, and -28.4% from 2010–2040; Harlan County's population is projected to change by -9.9% from 2010–2020, -20.1% from 2010–2030, and -30.6% from 2010–2040; Johnson County's population is projected to change by -1.3% from 2010–2020, -4.0% from 2010–2030, and -8.2% from 2010–2040; Knott County's population is projected to change -9.2% from 2010–2020, -20.5% from 2010–2030, and -32.3% from 2010–2040; Knox County's population is projected to change by -1.4% from 2010–2020, -4.9% from 2010–2030, and -10.2% from 2010–2040; Laurel County's population is projected to change by +4.5% from 2010–2020, +7.8% from 2010–2030, and +8.8% from 2010–2040; Lawrence County's population is projected to change by -1.2% from 2010–2020, -5.6% from 2010–2030, and -11.5% from 2010–2040; Leslie County's population is projected to change by -10.3% from 2010–2020, -21.9% from 2010–2030, and -33.4% from 2010–2040; Letcher County's population is projected to change by -9.4% from 2010–2020, -18.6% from 2010–2030, and -28.4% from 2010–2040; Magoffin County's population is projected to change by -6.3% from 2010–2020, -12.9% from 2010–2030, and -22.1% from 2010–2040; Martin County's population is projected to change by -9.5% from 2010–2020, -19.7% from 2010–2030, and -30.4% from 2010–2040; Perry County's population is projected to change by -6.7% from 2010–2020, -14.2% from 2010–2030, and -22.7% from 2010–2040; Pike County's population is projected to change by -8.6% from 2010–2020, -17.0% from 2010–2030, and -25.7% from 2010–2040; Pulaski County's population is projected to change by +4.1% from 2010–2020, +9.2% from 2010–2030, and + 13.1% from 2010–2040; and Whitley County's

these already struggling counties will experience unprecedented fiscal decline due to their shrinking tax base from both coal severance tax losses and unmined mineral tax losses.[63]

While the Kentucky Coal Fields Endowment Fund is an attempt to offset the fiscal impact coal-producing counties are experiencing, an endowment fund should have begun years ago to protect the numerous counties that no longer produce coal and are not considered eligible to receive expenditures from this fund. Lack of diversity and a nonexistent safety net has left eastern Kentucky in dire straits. As of now, there is no solution to help the other counties not included within the Fund, but if the Kentucky Coal Fields Endowment Authority can effectively use the endowment to positively impact eligible counties, then maybe a similar blueprint can be used for the counties not included.

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population is projected to change by +1.0% from 2010–2020, -1.5% from 2010–2030, and -5.5% from 2010–2040). *See id.*

[63] The coal severance tax was established in 1972 and taxes "the gross value of coal severed or processed (washed and loaded) in Kentucky." Jason Bailey, *Investing in a Future for Appalachia Kentucky: The Coal Severance Tax*, KY. CTR. ECON. POL'Y 1 (Apr. 21, 2013), https://www.kypolicy.us/sites/kcep/files/Coal Severance Presentation.pdf. Fifty percent of this tax base returns to coal producing counties in two forms: one fund is for economic development projects while the other is for local government use. *See id.* at 2 ("One stream was for revenue sharing with coalfield local governments that could be used for a wide range of purposes, but 30 percent of which was to go for coal haul road repair. And the second stream was an economic development fund. For that fund, each county was given an individual account and a separate account was reserved for multiple counties to cooperate together on projects."). Since the decline of the coal industry, coal counties' government budgets have taken a drastic hit due to the significant decrease in severance tax revenue. *See* Ralph B. Davis, *Coal Counties Dodge a Budget Buster*, MOUNTAIN TOP MEDIA (Apr. 27, 2018), http://mountain-topmedia.com/coal-counties-dodge-a-budget-buster/ ("The downturn in the coal economy has resulted in far fewer tax dollars for the coalfields. Seven years ago, over $300 million in severance tax was split between the state and 34 coal-producing counties. This year, that figure is projected to plunge to $79 million, leaving just shy of $40 million for those 34 counties [to split]."); Tom Latek, *State Revenue Receipts Doing Better Than Estimated*, KY. TODAY (Oct. 10, 2018, 2:52 PM), http://kentuckytoday.com/stories/state-revenue-receipts-doing-better-than-estimated,15609 (stating coal severance tax receipts from January to October 2018 were "down 21.1 percent" compared to the same time period in 2017). For example, the Martin County sheriff had to suspend "all law enforcement services provided by his office" in February 2019 because the Martin County fiscal court was unable to fund the department as planned. Will Wright, *'Lock Your Doors, Load Your Guns,' Sheriff Warns. Shortfalls Gutting Eastern Kentucky.*, LEXINGTON HERALD LEADER (last updated Feb. 11, 2019, 12:01 PM), https://www.kentucky.com/news/state/kentucky/article225392910.html. Similar budget shortfalls have occurred across the Eastern Kentucky Coalfields, including in Knott County where a partial government shutdown occurred in January and in Pike County where budget shortfalls led to layoffs and increased county service rates. *See id. See also* KY. EDUC. TELEVISION, *supra* note 2, at 4:29–4:42 (discussing the impact to eastern Kentucky school districts due to decrease in unmined mineral taxes).

III. ANALYSIS

The Kentucky Coal Fields Endowment Fund's purpose is to promote economic diversification of the economies in the coalfields by investing in projects therein.[64] Diversifying the economy of a region defined by its long dependence on one industry cannot occur simply by importing another industry into that area, especially when that region also contains high poverty rates and overall low quality of life. To truly create change within eastern Kentucky, investment must be made to improve community development and community health. This analysis will delve into the legislative intent behind the Kentucky Coal Fields Endowment Fund, the health issues that plague eastern Kentuckians and create obstacles to rising out of poverty, and the current and potential economic mechanisms that may help promote wholistic community development in eastern Kentucky.

A. Legislative Intent

The codification of the Kentucky Coal Fields Endowment Fund stressed the importance of aiding coal counties in recuperating from the significant downturn in their economy caused by decreased coal production and shrinking tax bases. To determine how the funds should best be used, the legislative intent of the sponsors of H.B. 156 and its amendments must be examined. For starters, the overarching purpose in creating the Kentucky Coal Fields Endowment Fund was to rectify the mistake that a trust fund of this type was not already created long ago.[65] While the failure to create such a fund cannot be completely remedied by the current legislation, its appropriations can be used effectively to achieve its purposes and help the Eastern Kentucky Coalfield.

The explicit purpose of the Fund is to support diversification of the economies of the coalfields by investing in "1. [e]conomic development; 2. [p]ublic infrastructure, water, and wastewater; 3. [p]ublic health and safety; and 4. [i]nformation technology development and access."[66] There is no

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[64] *See* KY. REV. STAT. ANN. § 42.453(2)(a) (LEXIS through Chapter 1 of the 2020 Regular Session).

[65] When the first version of the Fund was presented to the Senate Appropriations and Revenue Committee (the Fund was filed as Senate Bill 215 then added as a Senate Committee Substitute to House Bill 156), Senator Brandon Smith stated, "Honestly, if this had been put in play years ago they would have a tremendous trust right now that would allow these counties to be able to offset the losses they're seeing right now due to outmigration and loss of jobs and loss of revenue." *Senate Appropriations and Revenue Committee*, Video in *Archived Legislative Coverage*, KY. EDUC. TELEVISION at 14:53-15:06 (Mar. 7, 2017), https://www.ket.org/legislature/?archive&program=WGAOS&epoch=2017&nola=WGAOS+018133. *See also* Cheves, *supra* note 9.

[66] KY. REV. STAT. ANN. § 42.453(2)(a).

evidence that the projects were (or were not) intentionally listed in order of their importance. The criteria that the Authority should consider for projects are "economic impact, job creation, workforce development, community benefit, available partnerships, project readiness, and the ability for a project to be self-sustaining."[67] The last criterion supports the Fund's stated requirement that project funding "shall be non-recurring investments."[68]

Senator Smith made clear that his purpose in creating the Fund was not to achieve the same goals as the Appalachian Regional Commission's satellite program, Shaping Our Appalachian Region (SOAR).[69] Smith stated that his mission was to help the local communities and focus on a "smaller picture" than SOAR's plans of larger projects.[70] Conversely, SOAR's executive director Jared Arnett was interested in "a chance to help decide how the authority's money is invested in Eastern Kentucky."[71] When the Authority is appointed, it would be a mistake to allow SOAR that influence.[72]

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[67] *Id.* § 42.453(2)(b).

[68] *Id.* § 42.453(2)(a).

[69] *See* Cheves, *supra* note 9.

[70] *Id.* ("'SOAR has a different mission,' Smith said. 'My view of SOAR is, I'm on the ground. I'm looking at a smaller picture than SOAR is. I'm looking at day-to-day stuff like water and sewer projects. They're looking at bringing in Boeing and coupling that with work skills programs – much bigger stuff that is not in my wheelhouse.'").

[71] *Id.*

[72] *See generally* Will Wright & Bill Estep, *They Hoped to Make Eastern Kentucky's Economy SOAR. Five Years On, Progress Is Slow*, LEXINGTON HERALD LEADER (Aug. 29, 2018), https://www.kentucky.com/news/state/article217386310.html ("While officials and business leaders agree the region has improved since 2013, when Shaping Our Appalachian Region rose from the rubble of a collapsing coal industry, some of the summit's most notable endeavors include factories not yet built, a state-led broadband project facing long delays, and efforts to curb a drug epidemic that continues to plague the region."). SOAR has good intentions, but its track record leaves much to be desired. *Id.* For example, two industry projects supported by SOAR (and the Governor)—Enerblu, a battery plant planned to open in Pike County, and Braidy Industries, an aluminum mill to open in Ashland—have failed to materialize and have cost the Commonwealth millions of dollars in investment. *See* Will Wright and Bill Estep, *Enerblu Promised Hundreds of Jobs in Eastern Kentucky. It Just Suspended Those Plans.*, LEXINGTON HERALD LEADER (Feb. 5, 2019), https://www.kentucky.com/news/state/kentucky/article 225549725.html ("Enerblu, the battery manufacturing plant that promised hundreds of jobs for Eastern Kentucky, announced Tuesday that it has suspended its plans to build in Pikeville. In late 2017, the then-California-based company said it would build a $372 million battery manufacturing plant and bring 875 jobs to Pikeville."); Morgan Watkins, *Braidy Industries Extends Sale of Shares for Ashland Mill*, COURIER J. (Jan. 4, 2019), https://www.courier-journal.com/story/news/politics/2019/01/04/kentucky-based-braidy-industries-still-looks-mill-money/2461889002/ ("The company — which is subsidized by an unusual direct state investment of $15 million in return for an ownership stake and a promise to create more than 500 high-paying jobs" in 2017 — was supposed to begin full-scale aluminum production in 2020 yet still needs to raise $500 million in equity capital before it can begin building the mill."). *See also* Chris Otts, *Braidy Industries Extends Time Frame for $500 Million Stock Sale*, WDRB (Nov. 13, 2018), https://www.wdrb.com/news/business/braidy-industries-extends-time-frame-for-million-stock-sale/article_c76303f4-f563-5b8f-88f3-347881 7b3e35.html. Furthermore, SOAR-supported KentuckyWIRED, a middle-mile broadband project, has experienced major delays and has also cost the

While it might be beneficial to work on some projects in conjunction with SOAR, the Fund should not be an extension of SOAR and the legislature's intent conflicts with Mr. Arnett.[73]

While there does not seem to be any intention for listing economic development first in the project types as a preference for funding, it should be noted that it is conceivable the other three types of projects would promote economic development if they are completed effectively. For example, the availability of a clean and reliable water system allows companies a greater choice in site development. Likewise, having a healthy community results in a healthier workforce. Thus, how the Authority should determine its strategies and projects should not be based individually by project type, but by how to improve overall community development and community health. The strategies analyzed in both categories can be implemented to create overall diversification of the economy and improve the communities of the eligible counties.

B. Community Health

1. Culture of Health

In a statistical analysis of Appalachian health, the Appalachian Regional Commission (ARC), in conjunction with the Robert Wood Johnson Foundation, found seven "drivers" that were highly predictive of worse health in Appalachian counties than in other regions.[74] These factors were lower median household income (MHI), higher ARC Economic Index value (EVI), higher poverty rate (PR), higher percentage of smoking adults (PSA), higher percentage of adults who are physically inactive (PIA), higher percentage of the population receiving disability payments (DB), and higher

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Commonwealth a substantial amount. *See* Timothy Lee, *KentuckyWired Could Be A Disaster for Kentucky*, COURIER J. (Sept. 27, 2017), https://www.courier-journal.com/story/opinion/columnists/2017/09/27/kentuckywired-problems-for-kentucky/708313001/ ("They said the system would be finished by 2016... [Currently] KentuckyWired's target completion date isn't until late-2019. And considering the project's performance to date, it's likely that 2019 may also be too optimistic. In addition to construction delays, the ill-advised endeavor suffers mounting costs. The state and its partners so far have spent $175 million"). These major expenses show SOAR has large ideas but fails to effectively implement them, and, most worrisome, costs the Commonwealth significant monetary resources that could be used elsewhere for better planned projects. The Kentucky Coal Fields Endowment Fund is only appropriated $7.5 million each year, a relatively small amount, which needs to be used as effectively as possible. It is feasible that if SOAR has influence over the funding, they will use it to invest in their own poorly implemented projects.

[73] *See generally* Cheves, *supra* note 9. *See also supra* note 72 and accompanying text.

[74] *See* APPALACHIAN REG'L COMM'N ET AL., IDENTIFYING BRIGHT SPOTS IN APPALACHIAN HEALTH: STATISTICAL ANALYSIS 11 (2018), https://www.arc.gov/assets/research_reports/BrightSpotsStatisticalAnalysisJuly2018.pdf.

teen birth rates (TBR).[75] The report concluded that "[t]hese findings suggest that focusing on improvements in these seven drivers may lead to the greatest overall impact on health in a community."[76] It also concluded that positive health behaviors were statistically predictive of good health outcomes, which should be developed through traditional public health initiatives accompanied by community health infrastructure development.[77] Only one county within the Eastern Kentucky Coalfield—Pulaski—was designated as a "Bright Spot county," meaning that it was an area "where health outcomes are better than expected given the [community's] sociodemographic and behavioral profiles as well as [its] levels of access to healthcare."[78]

The study measured nineteen different outcomes to determine which counties were Bright Spots. The report did not include the exact numbers of each county for the seven predictive drivers, but, when using other sources, the categories can be compared among the seventeen counties using current data in the table below. Even with that said, the eastern Kentucky counties are, for the most part, predictive of worse health.

75 *Id.*
76 *Id.*
77 *Id.* at 12.
78 *Id.* at 9, 16.

Eastern Kentucky Coalfield Predictive Drivers							
County	**MHI**	**EIV**	**PR**	**PSA**	**PIA**	**DB**	**TBR**
Bell	23,558	228.9	36.7%	35%	41%	11%	64
Breathitt	25,861	230.1	36.2%	38%	38%	15%	59
Floyd	31,196	198.9	32.2%	28%	36%	11%	67
Harlan	24,451	247.8	41.5%	29%	42%	10%	70
Johnson	35,629	177.5	23.3%	26%	36%	9%	55
Knott	30,503	218.7	34.6%	29%	50%	10%	48
Knox	26,061	220.5	32.2%	41%	44%	10%	65
Laurel	37,235	152.9	24.3%	17%	40%	5%	47
Lawrence	32,703	184.6	32.8%	19%	40%	9%	46
Leslie	27,861	227.8	31.0%	28%	39%	10%	66
Letcher	30,293	217.6	30.8%	29%	46%	9%	58
Magoffin	29,578	271.3	32.1%	30%	35%	13%	76
Martin	29,239	225.4	35.8%	29%	35%	11%	49
Perry	31,820	181.5	25.9%	28%	39%	11%	64
Pike	32,972	172.8	28.8%	30%	39%	8%	48
Pulaski	35,022	155.8	23.7%	28%	35%	6%	51
Whitley	34,103	175.8	26.5%	33%	39%	11%	57

Sources:	**MHI**[79]	**EIV**[80]	**PR**[81]	**PSA**[82]	**PIA**[83]	**DB**[84]	**TBR**[85]

A subsequent report by the ARC explored the community strengths of some Bright Spot counties within the Appalachian region.[86] The counties were said to have created a "Culture of Health," an initiative envisioned by the Robert Wood Johnson Foundation, which is "operationalized through an action framework that is organized around . . . four Action Areas."[87] The foundation believes that "[a]ctivity across these four action areas will, with time, lead to outcomes of improved population health, well-being, and equity."[88] The Action Areas are "1. [m]aking health a shared value[;] 2. [f]ostering cross-sector collaboration[;] 3. [c]reating healthier, more equitable communities[; and] 4. [s]trengthening integration of health services and systems."[89]

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[79] *See Quick Facts*, *supra* note 57.

[80] *County Economic Status in Appalachia, FY 2018*, APPALACHIAN REGIONAL COMMISSION (Aug. 2017), https://www.arc.gov/assets/maps/related/County-Economic-Status_FY2018_Data.xls (go to "ARC Counties" tab on the spreadsheet). Higher values of the ARC Economic Index correlate to higher economic distress. *See id* (go to "Sources & Methodology" tab on the spreadsheet). ARC Economic Index is used by the Appalachian Research Commission "to compare each county in the nation with national averages on three economic indicators – three-year average unemployment rates, per capita market income, and poverty rates." APPALACHIAN RES. COMMISSION ET AL., EXPLORING BRIGHT SPOTS IN APPALACHIAN HEALTH: CASE STUDIES 203, https://www.arc.gov/assets/research_reports/BrightSpotsCaseStudiesJuly2018.pdf.

[81] *See Quick Facts*, *supra* note 57.

[82] *See Data by Location*, KY. HEALTH FACTS, http://www.kentuckyhealthfacts.org/data/location/. (select county from dropdown menu; then scroll to the "Social & Behavioral Indicators" dataset) (last visited Dec. 18, 2019). Smoking percentage is defined as the county "percent of adults who are current smokers (variable calculated from one or more [Behavioral Risk Factor Surveillance System Data] questions)" from 2015–2017. *Id.*

[83] *See id.* Lack of physical activity is defined as the county "percent of adults who did not participate in any physical activity or exercise during the past month" from 2015–2017 Behavioral Risk Factor Surveillance System Data. *Id.*

[84] The percentage of the population receiving disability payments was calculated as the total number of recipients in the county receiving OASDI and/or SSI divided by the county's population. *See* APPALACHIAN REG'L COMM'N ET AL., *supra* note 74, at 6 (defining disability benefits); SOC. SEC. ADMIN., SSI RECIPIENTS BY STATE AND COUNTY, 2017 (June 2018), https://www.ssa.gov/policy/docs/statcomps/ssi_sc/2017/ky.pdf (containing disability benefit data for all Kentucky counties); *see also Quick Facts*, supra note 57.

[85] *See Data by Location*, *supra* note 82. Teen birth rate is defined as the "rate per 1,000 women ages 15–19" between 2011–2015. *Id.*

[86] *See generally* APPALACHIAN REG'L COMM'N ET AL., *supra* note 74.

[87] *Id.* at 15.

[88] *Id.* at 16.

[89] *Id.* at 15.

Given the data in the table above, it is not surprising that the eastern Kentucky counties have higher mortality rates from cancer and heart disease. Heart disease can be attributed to lack of activity, unhealthy eating choices, and smoking.[90] Those same characteristics also contribute to a largely overweight population that ranges between sixty-five and seventy-nine percent of adults in the eastern Kentucky counties.[91] Most health rates in the eastern Kentucky counties are worse than the Commonwealth's average.[92] Most astonishing is the cancer mortality rate in eastern Kentucky. For instance, a Harlan County resident is 1.4 times more likely to pass away from cancer than the average Kentuckian, while Breathitt Countians are almost twice as likely to pass away from heart disease.[93] Such astounding numbers logically result in lower quality of life and a high population of residents with less than good health.

Residents' personal choices may affect some aspects of their health, but not all disease prevalence can be attributed to personal fault. The environment one lives in plays a significant role in one's ability to be healthy. For instance, cancer can be caused by environmental and hereditary factors.[94] As such, the environment of eastern Kentucky must be examined and improved to ensure a "culture of health" can exist. The Fund's ability to invest in projects relating to infrastructure, water, and wastewater could significantly improve the quality of life and health for individuals in eastern Kentucky.

The ARC found commonalities between Bright Spots that could be used elsewhere to promote health and welfare. Those counties had "community leaders engaged in health initiatives, cross-sector collaboration, resource sharing, local healthcare providers committed to public health, [an] active

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[90] *See generally Causes of Heart Failure*, AM. HEART ASS'N., https://www.heart.org/en/health-topics/heart-failure/causes-and-risks-for-heart-failure/causes-of-heart-failure (last visited Feb. 10, 2019).

[91] The prevalence of overweight adults is those defined as having a Body Mass Index (BMI) of 25.0 or higher; this category includes those that are defined as obese. *See Data by Location*, *supra* note 82. In Bell County, 74% of the population is defined as overweight; 67% in Breathitt County; 75% in Floyd County; 75% in Harlan County; 74% in Johnson County; 79% in Knott County; 76% in Knox County; 75% percent of Laurel County's population is defined as overweight; 75% in Lawrence County; 76% in Leslie County; 73% in Letcher County; 74% in Magoffin County; 76% in Martin County; 72% in Perry County; 72% in Pike County; 73% in Pulaski County; and 65% in Whitley County. *See id.*

[92] For example, the 68% of the state as a whole is considered overweight compared to the generally higher percentages in eastern Kentucky counties. *See id.*

[93] *See id.* Harlan County's rate was found by dividing its rate of cancer deaths (279 per 100,000 population, age-adjusted) by Kentucky's rate (198). *See id.* Breathitt County's rate was found by dividing its rate of heart disease deaths (388 per 100,000 population) by Kentucky's rate (200). *See id.*

[94] *See generally What Causes Cancer?*, AM. CANCER SOC., https://www.cancer.org/cancer/cancer-causes.html (last visited Feb. 10, 2019).

faith community, [and] initiatives to combat substance abuse."[95] The report found that each Bright Spot studied had "sustained, committed leadership" that "met regularly to discuss health issues in the county and formulate responses."[96] This created "strong networks of communication and cooperation."[97] From this, it is easy to understand that another commonality between the Bright Spot counties was cross-sector collaboration either within the county or among neighboring communities.[98] Counties also shared resources and "set aside any differences to achieve core, shared goals."[99] This was accomplished via government, volunteer, and/or faith-based organizations.[100]

As exemplified by the overlap between most commonalities found within Bright Spot counties, collaboration between community leaders and residents is needed to create a successful development strategy. Communication is also required by all interested parties to ensure that underlying issues are being addressed. Communities within a county, as well as counties within the region, must understand that improving eastern Kentucky is a collective goal. "Sustaining collaborative work depends on thorough planning, resourceful grant-writing, and effective communications – core elements of community capacity that are missing in many rural areas."[101] Improvement in these areas is essential to solve eastern Kentucky's problems. Sharing resources and ideas, instead of competing within eastern Kentucky, encourages the creation of a prosperous region.

2. Employment After Addiction

The rates of unhealthy individuals raise questions about whether access to healthcare within the eastern Kentucky counties would alleviate this problem, especially since all but four counties are federally designated as Primary Care Health Professions Shortage Areas.[102] Yet, almost eighty percent of all counties' adult populations (up to ninety-eight percent in

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[95] APPALACHIAN REG'L COMM'N ET AL., *supra* note 74, at 9.

[96] *Id.*

[97] *Id.*

[98] *Id.* at 9–10 ("These collaborations are facilitated by a seeming absence of turf wars, minimal competition, and sharing credit for accomplishments.").

[99] *Id.* at 10.

[100] *See id.* at 9–12.

[101] *Id.* at 12.

[102] Johnson, Lawrence, Martin and Pulaski counties are not federally designated. KEVIN A. PEARCE ET AL., KENTUCKY'S PRIMARY CARE WORKFORCE SHORTAGES 2016–2025 AND RECOMMENDATIONS FOR INCREASING THE PRODUCTION OF PRIMARY CARE PHYSICIANS FOR KENTUCKY 6–7 (Nov. 2016), https://ruralhealth.med.uky.edu/sites/default/files/Kentuckys%20Primary%20Care%20Workforce%20Shortages.pdf.

Martin County) say they have personal physicians.[103] Thus, it could be posited that high numbers of the population with a primary care physician would suggest a healthier population. However, despite such numbers, the high prevalence of disease in these counties suggests the opposite. This incongruity is apparent in the continuously high rates of unhealthy factors (e.g. smoking, lack of activity) and outcomes (e.g. mortality rates, disease prevalence).[104]

The vicious cycle that requires doctors to repeatedly treat symptoms instead of underlying ailments (feasibly due to patients rejecting physicians' orders regarding physical activity and diet) is a possible contributing factor of the current opioid epidemic.[105] Yet even if a patient's own negligence is to blame for recurring symptoms, physicians prescribe that patient's medications and should be held liable for such. Patients may continue to take the highly addictive medications, but it is the doctors' responsibility to ensure such medications are prescribed only when needed and abuse is not taking place. In 2017, twelve counties saw opioid prescription rates over one prescription per person.[106] Three counties—Bell, Floyd, and Whitley—saw prescription rates over two prescriptions per person.[107] Eight counties were ranked within the nation's top fifty opioid prescribing counties in 2017.[108]

Overprescribing is at the heart of the opioid epidemic.[109] Citizens must first have access to the drug before becoming addicted to it. Opioid addiction has led to higher usages of other drugs, including methamphetamine and heroine.[110] The drug crisis induced the CDC in late 2016 to identify 220 counties, representing the top five percent, in the United States that are at risk of HIV and/or Hepatitis C outbreaks due to the opioid epidemic.[111] Sixteen

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[103] This indicator is defined as the "percent of adults reporting that there was one person they think of as their personal doctor or health care provider." *See Data by Location*, *supra* note 82.

[104] *Id.*

[105] *See generally What is the U.S. Opioid Epidemic?*, U.S. DEP'T. HEALTH AND HUM. SERV., https://www.hhs.gov/opioids/about-the-epidemic/index.html (last updated Sept. 4, 2019).

[106] Foundation for AIDS Research, *Kentucky Opioid Epidemic*, OPIOID & HEALTH INDICATORS DATABASE, https://opioid.amfar.org/KY (select "Healthcare" from the dropdown menu in the "Data Explorer" section to view opioid prescription rates in Kentucky by county) (last visited Feb. 10, 2019).

[107] *Id.*

[108] These are Bell, Whitley, Floyd, Perry, Pike, Leslie, Breathitt, and Johnson counties. *See* Foundation for AIDS Research, *National Opioid Epidemic*, OPIOID & HEALTH INDICATORS DATABASE, http://opioid.amfar.org/indicator/opioid_RxRate (last visited Feb. 10, 2019).

[109] *See generally* Martin A. Makary et al., *Overprescribing is Major Contributor to Opioid Crisis*, BMJ, Oct. 2017, at 359.

[110] *See* Bill Estep, *Where We Die from Drug Overdoses Has Changed Drastically in Kentucky*, LEXINGTON HERALD LEADER (Oct. 17, 2018, 2:36 PM), https://www.kentucky.com/news/state/article 219932940.html.

[111] *See generally* Michelle M. Van Handel et al., *County-level Vulnerability Assessment for Rapid Dissemination of HIV or HCV Infections among Persons who Inject Drugs, United States*, 73 J. ACQUIRED

of the seventeen counties in the Eastern Kentucky Coalfield were listed.[112] Breathitt and Perry Counties ranked as the third and fourth, respectively, most likely counties in the nation to see an outbreak.[113]

In addition to usage, eastern Kentucky has the highest drug overdose death rate in the Commonwealth; Leslie County's drug overdose mortality rate is 102.3 deaths per 100,000 people ages fifteen to sixty-four.[114] That is over 2.5 times Kentucky's average and over 4.5 times the national average.[115] Only three of the eastern Kentucky counties are below the state's average: Laurel, Magoffin, and Pulaski.[116]

The opioid epidemic has become such a problem that Kentucky's current economic development plan of importing companies to develop within eastern Kentucky is becoming more difficult due to low participation in the labor market (feasibly from heavy addiction) and addicts unable to acquire or maintain employment.[117] While it is understandable companies would not want to hire employees currently addicted to controlled substances, being in recovery from addiction also limits an addict's job prospects.[118] Communities need to not only provide resources to treat addiction but also provide resources to allow an addict to beat addiction. "[S]ociety must assist [those]

IMMUNE DEFICIENCY SYNDROMES 323 (2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5479631/.

112 Foundation for AIDS Research, *supra* note 106 (showing all counties except Pulaski County were categorized by the CDC as the most vulnerable counties in the nation "at risk of outbreaks of HIV and/or hepatitis C as a result of the opioid epidemic").

113 *Id.*

114 *Drug Overdose Deaths in Appalachia*, NAT'L OPINION RES. CENT., https://overdosemappingtool.norc.org/ (last visited Feb. 10, 2019) (click on each county's outline).

115 *See id.* The national and state averages are found by selecting a county and clicking "View Details" for that particular county, which contrasts that county's statistics with the state, regional, and national information. *See id.* The national morality rate is 22.5 deaths per 100,000 population (ages 15–64); Kentucky's morality rate is 40.4. *See id.*

116 *Id.* Bell County's drug overdose morality rate is 84.6; Breathitt County's drug overdose mortality rate is 60.9; Floyd County's drug overdose morality rate is 75.8; Harlan County's drug overdose morality rate is 48.5; Johnson County's drug overdose morality rate is 45.6; Knott County's drug overdose morality rate is 75.6; Knox County's drug overdose morality rate is 53.9; Laurel County's drug overdose morality rate is 31.8; Lawrence County's drug overdose morality rate is 43.7; Leslie County's drug overdose morality rate is 102.3; Letcher County's drug overdose morality rate is 50.8; Magoffin County's drug overdose morality rate is 35.2; Martin County's drug overdose morality rate is 60.6; Perry County's drug overdose morality rate is 68.9; Pike County's drug overdose morality rate is 59.1; Pulaski County's drug overdose morality rate is 30.5; and Whitley County's drug overdose morality rate is 76.9. *Id.*

117 *See generally* Bill Estep, *'Nobody to Pick from.' How Opioids are Devastating the Workforce in Eastern Kentucky*, LEXINGTON HERALD LEADER (June 27, 2018), https://www.kentucky.com/news/state/article213189309.html.

118 *See generally* Lauren Rogal, *Legal Strategies for Economic Empowerment of Persons in Recovery*, 120 W. VA. L. REV. 1025 (2018).

in recovery from substance abuse disorders to become productive, self-sufficient members of their communities."[119]

Recovering addicts "face many obstacles to gainful employment, including stigma, compromised work histories, employer risk perception and [possible] records of interaction with the criminal justice system."[120] These obstacles are not the only ones a recovering addict must face; "[f]actors such as low socioeconomic status, comorbid psychiatric conditions, and lack of family or social supports for continuing abstinence are among the most important variables associated with lack of treatment compliance, and ultimately to relapse after treatment."[121] Thus, long-term recovery is only possible if community support is available to allow an individual to overcome their addiction.

"Some experts say that current approaches [in the workplace] don't serve employees or employers well."[122] For instance, employers should reconsider "zero-tolerance" policies or employee assistance programs because "[e]mployees may refuse to seek help because they're afraid of using employer-sponsored benefits" or being terminated.[123] Such policies are also disadvantageous for employers because "employers struggling to attract and retain talent may be losing people who could benefit from addiction treatment and recovery and return to work as productive employees."[124]

Possible alternatives to "zero-tolerance" policies are self-disclosure protocols, allowing time off work under federal regulations, and implementing educational and support programs.[125] Most interesting is the possibility of implementing self-disclosure protocols within the workplace to allow employees to disclose their addiction without fear of immediate dismissal.[126] Such a program would allow the employee to "take a leave of absence from work to receive treatment and return to work (though not necessarily in the same position)."[127] This would not prohibit an employer

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[119] *Id.* at 1026.

[120] *Id.*

[121] RUBY K. PAYNE ET AL., BRIDGES OUT OF POVERTY: STRATEGIES FOR PROFESSIONALS AND COMMUNITIES 253 (rev. ed. 2009) (quoting Charles P. O'Brien & A. Thomas McLellan, *Myths about the Treatment of Addiction*, 347 LANCET 237, 239 (1996)).

[122] Joanne Sammer, *Time for New Approaches to Employee Substance Abuse and Addiction?*, SOC. FOR HUM. RESOURCE MGMT. (June 13, 2018), https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/new-approaches-employee-substance-abuse-addiction.aspx.

[123] *Id.*

[124] *Id.*

[125] *See* Dawn J. Lanouette, *Opioid Addiction Enters the Workplace*, A.B.A. (Mar. 14, 2018), https://www.americanbar.org/groups/litigation/committees/woman-advocate/articles/2018/opiate-addiction-workplace/.

[126] *See id.*

[127] *Id.*

from dismissing an employee for drug problems but would essentially allow the employee a "second chance" if the problem was disclosed to the employer and appropriate help was sought.[128] "Studies have shown that employees whose employers support their recovery through treatment and subsequent monitoring are more likely to succeed in rehabilitation than those whose employers terminated their employment."[129] Clearly, costs to a businesses are important factors when determining what policies to implement in the workplace, but communities wrought with opioid problems will not be able to improve unless the entire community comes together to support recovery through alternative practices. Prioritizing projects that allow for on-the-job recovery and/or second chance practices would allow recovering addicts an option to reenter the workforce without having to combat the stigma that many new employers may perceive.

C. Community Development

1. Current Economic Development Strategies

Kentucky's economic policy is based around thirty development programs that create an economic development policy whose "fundamental premise [is] to use state funds to leverage debt and forego business tax revenues to attract new private enterprises and create jobs."[130] The Kentucky Center for Economic Policy (KCEP) characterizes this approach as "misguided tunnel vision" which "focus[es] narrowly on an ineffective attempt to lure corporations by sacrificing our quality of life through lower wages and corporate tax breaks."[131] Such an approach can be categorized as a trickle-down method that "erode[s], rather than enhance[s], our economy."[132]

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[128] *Id.*

[129] *Id.*

[130] TIMOTHY COLLINS, SELLING THE STATE: ECONOMIC DEVELOPMENT POLICY IN KENTUCKY 5 (2015), http://www.iira.org/wp-content/uploads/2016/11/Selling-The-State-Economic-Development-Policy-in-Kentucky.pdf.

[131] KY. CNTR. ECON. POL'Y, AN ECONOMIC AGENDA FOR A THRIVING COMMONWEALTH 3 (2018), https://kypolicy.org/dash/wp-content/uploads/2018/08/Economic-Agenda-website.pdf. Kentucky Center for Economic Policy "launched in 2011 and is a project of the Mountain Association for Community Economic Development (MACED). MACED is a community development organization that seeks to create economic alternatives that work for people and places in eastern Kentucky and Central Appalachia. . . . KCEP is a member of the State Priorities Partnership, a national network of organizations that work to address state tax and budget issues and their impact on low- and moderate-income families. . . . KCEP is also a member of the Working Poor Families Project and the Economic Analysis and Research Network (EARN)." *About Us*, KY. CNTR. ECON. POL'Y, https://kypolicy.org/about/ (last visited Feb. 10, 2019).

[132] KY. CNTR. ECON. POL'Y, *supra* note 131.

The Illinois Institute for Rural Affairs' research on Kentucky's economic development policy summed up the problems best:

> Despite oft-stated best intentions, an economic development policy built chiefly on a low-wage strategy, coupled with incentives and tax breaks for businesses, was reluctant at best, except to where it came to assisting capital accumulation. The policy marginally spread social benefits evenly among workers and their communities or across regions. It did not push for higher technology industries that offered higher wages until later in the game. Nor did it foster conditions for entrepreneurship.[133]

The report further stated Kentucky's policies evidenced:

> persistent poverty and structural unemployment among individuals and across broad regions, especially center cities, declining small towns, and other rural areas; . . . narrowing regional disparities of wealth, but wider gaps for wages and salaries, especially in Appalachia; alterations of the class structure to create more wage earners in place of small business owners; and mitigation of some inequities, but persistence of many historic problems.[134]

The report concludes that Kentucky's policies from the twentieth century to present "fragmented local control and businesses," causing decline in self-sustaining communities, which "suggests Kentucky's governors, legislators, judges, and business and intellectual elite missed an opportunity to build Kentucky's rural people and their communities by fostering regional-, national- and later global-class entrepreneurship."[135]

Likewise, KCEP believes that policies should be based in creating economic growth and improving quality of life.[136] KCEP concludes that "[b]y building a stronger foundation for development through education, a modern infrastructure, greater community health and resilience and more economic security, we create shared prosperity."[137] Specifically, KCEP recommends five specific policy areas that need to be devoted to: (1) "improv[ing] job quality and economic security;" (2) "strengthen[ing] education for all Kentuckians;" (3) "build[ing] resilient, healthy communities;" (4) "equip[ping] Kentucky for prosperity in the modern economy," i.e.

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[133] COLLINS, *supra* note 130, at 205.
[134] *Id.* at 204–05.
[135] *Id.* at 205.
[136] *See* KY. CTR. FOR ECON. POL'Y, *supra* note 131, at 3–4.
[137] *Id.*

infrastructure; (5) "clean[ing] up the tax code to invest in our Commonwealth."[138]

If Kentucky is to learn from its failed attempts, the real question for policymakers is not how to incentivize industry into the region but how to incentivize industry within the region. Instead of mirroring policy used in urban areas and large population centers, policy should be tailored around the values of rural residents and allow for local innovation. Promoting self-sustaining communities should be at the forefront in rural areas, which will decrease income discrepancies and promote community diversity.

As exemplified by past attempts, national poverty models are unsustainable in eastern Kentucky.[139] Urban models to combat poverty are ineffective due to the discrepancies between rural and urban poor.[140] For example, "rural poverty is largely a problem of the working poor [where] rural workers are more likely to be in low-wage jobs than urban workers."[141] This difference requires a variation in normal economic thinking because creation of jobs in rural areas does not directly correlate with an increase in economic well-being. Similarly, the economic structure of rural areas has historically limited economic potential because "rural areas tend to have less-diverse employment opportunities."[142] This, of course, is true in eastern Kentucky which has relied upon coal mining as its main industry.[143] "[T]here is no 'one-size-fits-all' approach to poverty reduction, and unique circumstances in rural areas call for unique and innovative policy approaches for rural populations."[144] This conclusion is supported by the failed attempts to alleviate poverty through either national policies or Kentucky's current economic development model.

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[138] *Id.*

[139] *See generally* Pam Fessler, *Kentucky County That Gave War On Poverty A Face Still Struggles*, NPR (Jan. 8, 2014), https://www.npr.org/2014/01/08/260151923/kentucky-county-that-gave-war-on-poverty-a-face-still-struggles (describing local sentiments on the progress of the national "War on Poverty," which was given a face in Martin County).

[140] *See generally* Jane M. Mosley & Kathleen K. Miller, *Spatial Variations in the Extent, Causes, and Consequences of Poverty: A Comparison of Rural and Urban Places*, 13 GEO. J. ON POVERTY L. & POL'Y 169 (2006).

[141] *Id.* at 175.

[142] *Id.* at 176.

[143] *See* Patrick R. Baker, *Decommissioning Coal in an Extraction Culture: The Aftermath and Lessons Learned*, 11 J. WORLD ENERGY L. BUS. 237, 237 (2018) ("Appalachia provides an excellent illustration about those areas solely dependent upon the extraction of natural resources as a basis for their economy, there is generally a lack of investment in basic infrastructure and services.").

[144] Mosley & Miller, *supra* note 140, at 177.

2. Bridges out of Poverty

Bridges out of Poverty was written to "improve the lives of people in poverty and, by extension, to help make sustainable communities" by developing strategies for organizations to use when trying to aid those in generational poverty.[145] Poverty is a multi-faceted issue that "is caused by the choices of the poor, the lack of human and social capital, exploitation of the poor, and political/economic structures."[146] *Bridges out of Poverty* and its supplemental publications explain that eleven "quality-of-life indicators" are essential to understanding poverty, because poverty can then be defined as "the extent to which an individual or community does without [them]."[147]

Many of the "essential resources" are needed to develop both successful individuals and communities, such as financial resources, beneficial relationships, motivation and persistence, social capital to create support systems, and the ability to interact with different groups of people.[148] The "additive model" created from this understanding holds three conclusions are necessary in community development: (1) "resources are to be developed by communities, families, and individuals;" (2) "the optimal way to build resources is to build on one's strengths;" and (3) the strategy "must develop resource-building strategies across all four areas of poverty research" (individual behaviors, human and social capital in the community, exploitation of the individual, and political/economic structures) because it

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[145] PAYNE ET AL., *supra* note 121, at 5. "Generational poverty is defined as having been in poverty for at least two generations; however, the patterns begin to surface much sooner than two generations if the family lives with others who are from generational poverty." *Id.* at 49.

[146] PHILIP E. DEVOL, USING THE HIDDEN RULES OF CLASS TO CREATE SUSTAINABLE COMMUNITIES 20 (2015), https://ahaprocess.staging.wpengine.com/wp-content/uploads/2015/04/Using-Hidden-Rules-Class-Create-Sustainable-Comm.pdf.

[147] PAYNE ET AL., *supra* note 121, at 267–68. The authors point to eleven "essential resources" as quality-of-life indicators. These are financial, emotional, mental/cognitive, language, social capital support systems, physical, spiritual, integrity and trust, motivation and persistence, relationships, and knowledge of hidden rules. Financial resources are defined as the "money to purchase goods/services." Emotional resources are defined as the "ability to control emotional responses." Mental/cognitive resources are defined as the "mental capability[ies] to deal with daily life." Language is defined the "ability to use appropriate vocabulary and grammar." Social capital support systems are defined as "friends, family, and other resources to help." Physical resources are defined as "physical health [and] mobility." Spiritual resources are defined as "belief in divine purpose/ guidance." Integrity and trust resources are defined as "trust, predictability, [and] safety." Motivation and persistence is defined as "energy, drive, [and] planning." Relationships as a resource are defined as "access to people who consistently behave appropriately and are nurturing." Knowledge of hidden rules as a resource is "know[ing] unspoken cures [and] behaviors of different groups." *See 11 Essential Resources*, AHA! PROCESS, https://ahaprocess.staging.wpengine.com/wp-content/uploads/2016/03/Resources-11.png (last visited Feb. 10, 2019).

[148] *See 11 Essential Resources*, *supra* note 147.

is ineffective when focusing solely on the behaviors of the individual.[149] Communities must restore rich social capital "where citizens contribute to the building of the [community] with their particular skills, gifts, and talents."[150]

IV. RESOLUTION

Policies in the past have centered around the stereotypes of the region and were built on the presumption that something is fundamentally wrong with the culture. Policies instead should run parallel with citizens' values to allow them to stay near their families and create a sustainable microeconomy that promotes diversity and decreases the apparent income gap present within extraction cultures. Most small communities in eastern Kentucky, with the exception of some county seats, never experienced diverse economies like many other small towns in the Commonwealth did. These small communities were essentially monopolies run by the coal industry before they were sold to the residents. After their privatization, the communities never developed due to their remote locations.

While some locations are still too remote to effectively organize their own economies, and because the population in those areas continues to decrease, it is still possible to create diverse local economies in the "larger" small communities of eastern Kentucky. Empowering eastern Kentuckians to innovate local-based economic solutions will create a sense of community and pride in achievement that does not come from importing large industry into the region that continues to create income discrepancies in communities.

The Kentucky Coal Fields Endowment Fund projects should promote development across all aspects of community within eastern Kentucky. With that said, the Endowment Authority should prioritize certain types of projects over others to ensure that the economic impact is felt locally instead of funding projects by outside investors and owners. Reducing the number of middlemen will allow for greater oversight and will increase community benefit.

Using the policies analyzed within this Note and the knowledge of past failed attempts, a policy framework that provides guiding principles for investing in the eligible eastern Kentucky counties is given below as a sample Kentucky Administrative Regulation.

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149 PAYNE ET AL., *supra* note 121, at 259, 268.

150 *Id.* at 274.

A. Administration of Kentucky Coal Fields Endowment Fund in the Eastern Kentucky Coalfields

STATUTORY AUTHORITY: KRS 42.453-42.454.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.453 to 42.454 authorize the Kentucky Coal Fields Endowment Authority to promulgate administrative regulations governing administration of the Kentucky Coal Fields Endowment Fund.[151] The fund supports efforts to diversify the economy of the coal fields within Kentucky through non-recurring investments in economic development; public infrastructure, water, and wastewater; public health and safety; and information technology development and access.[152] This administrative regulation establishes the project selection criteria for participation in that program.

Section _. Eligibility Standards. (1) Eligible projects. Projects located in Bell, Breathitt, Floyd, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Magoffin, Martin, Perry, Pike, Pulaski, and Whitley counties are eligible to receive investment if the following conditions are met:

The project relates to economic development; public infrastructure, water, and wastewater; public health and safety; or information technology development and access.[153]

Section _. Prioritization of Applications. The authority shall prioritize the applications of projects within eligible counties.

Classification of priorities. Applications shall be prioritized based on the following criteria:

Projects creating diversity within the community and the county, as a whole;

Projects promoting entrepreneurship;

Projects promoting small-business development;

Projects providing on-the-job training;

Projects employing recovering addicts;

Projects employing unemployed residents;

Projects employing local county residents;

Projects modernizing public infrastructure;

Projects promoting community collaboration;

Projects improving the health of the community;

Projects promoting healthy environments for workers and the community.

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[151] *See* KY. REV. STAT. ANN. § 42.454(9) (LEXIS through Chapter 1 of the 2020 Regular Session).

[152] *See* § 42.453(2)(a).

[153] *Id.*

Projects within each classification identified in subsection (1) of this section shall be prioritized based on the following criteria:

Economic impact to the community and the county, as a whole;
Job creation;
Workforce development;
Community benefit;
Available partnerships within the community and the Commonwealth;
Project readiness;
Ability for the project to be self-sustaining.[154]

B. Rationale

The administrative regulation above assembles the ideas expressed throughout this Note on how best to promote community health and community development in eastern Kentucky. The criteria listed in the second section of the regulation provides guidelines to the Authority for which projects should be invested in to promote growth and economic diversity throughout eastern Kentucky. Aiding local entrepreneurs and innovators is key to retaining the best and brightest in eastern Kentucky and growing the economy from within. It is imperative that these projects diversify the economy in eastern Kentucky to ensure a downturn from one industry does not cripple the entire region. Projects that employ locals, the unemployed, recovering addicts, and that provide on-the-job training promote economic growth within eastern Kentucky by creating jobs within the region and allowing residents from diverse socioeconomic backgrounds to gain employment. Eastern Kentuckians should feel supported by their communities, and that support will foster stronger, healthier communities and relationships as the economy grows.

V. CONCLUSION

Eastern Kentucky has been historically plagued with chronic poverty caused by multi-faceted issues within the region. The largest contributing factor to such poverty stems from the monolithic economy created by the region's reliance on coal as its primary job source. After the coal industry's significant decline, counties must rethink their community strategies to promote innovation within the region. The Kentucky Coal Fields Endowment Fund, once appropriated for, may be the stable support the region needs to build a sustainable framework. Projects promoting healthier communities

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[154] *See generally id.* § 42.453(2)(b).

and economic diversity must be at the forefront of the Fund's expenditures. The Kentucky Coal Fields Endowment Authority should prioritize projects based on their benefit to the local economy, including investing in local innovation instead of importing industry as most Kentucky economic development policies try to promote. Eastern Kentucky is known for its strong ties to the community, and that value should be utilized to create collaboration within the counties so all residents are working for a brighter future.