In January 1935, Joseph F. Guffey, freshman senator from Pennsylvania, introduced a bill designed to bring some order to the chaos which was the bituminous coal industry. The mining concern as a whole was beset by a multitude of problems: intersectional disputes over pricing, heightened by the wage-scale differential between North and South; severe union-management strife in virtually all regions; troubles with marginally productive mines and those which were grossly overproducing ore. In addition to all of this lay the stark fact that bituminous coal utilization had already crested in the United States, and it was beginning its long decline as the fuel of choice, succumbing eventually to oil. Even so, at the time it was considered vital and the Guffey Act of 1935 attempted to resolve the problems of this extremely distressed industry.

Senator Guffey’s original bill attempted to iron out the problems in
the industry by centralizing control of all of the mining to a much greater extent than had been the case with the NRA's operation. To that end, the act provided for a National Bituminous Coal Commission, comprised of five members, which would establish a code of competition. The Commission, in turn, authorized the National Coal Producers Board to fix minimum prices and "allocate tonnage among districts in the hope of resolving the regional conflicts" inherent in the industry. (The NCPB was, of course, answerable to the Commission for its price-fixing policies.)

The bill imposed a 25 percent tax on coal, however provisions were made to rebate all but about one percent to the operators in order to encourage compliance with the act in its initial phases. In order to attract the support of John L. Lewis and the United Mine Workers, section 7a of the National Industrial Recovery Act was included and the bill further stipulated that "any wage contract negotiated with the operators producing two-thirds of the tonnage in a district or group of districts would be binding on all producers" within the area. There were also references in the bill to a program for retraining miners whose jobs were lost to technology or as a result of the government's closing of inefficient mines. The bill, then, had something for everyone. The operators were guaranteed minimum prices; the public had the feeling that the producers were not getting away with any exhorbitant profits by virtue of the 25 percent tax; labor had guaranteed wages and job retraining; the nation was assured a supply of bituminous coal during extremely depressed times. It was all very neat, a bona fide panacea, and yet the Guffey Coal Act of 1935 had a very rough time in the legislative process and in the courts, eventually being struck down. The problems the bill encountered and the reasons for its troubles will be examined further here.

In submitting his bill, Senator Guffey was speaking directly to what he felt were the shortcomings in the Roosevelt Administration's handling of the crisis in the bituminous coal industry. Briefly stated, the NRA adopted a plan labeled the Bituminous Coal Code in September, 1933. The code, in the words of Glen Parker, "represented a curious road between a unified national code authority and regional code authorities." The code represented a weak governmental effort to regulate wages, prices, and production. In light of a great number of New Deal programs, the code, by contrast, still left much of the process of stabilization and revitalization to the industry itself. This, perhaps, was the biggest shortfall of the plan. The industry was in desperate need of centralization of authority in order to combat the "old-time anarchy" of the coal industry. The past efforts at self-regulation of bituminous
mining had failed miserably and the government's halfway measure in the form of the code, while giving some short-run stability to wages and prices, was not much better. Full authority, vested in the government, was deemed necessary by many to deal with the situation effectively. The Guffey Act offered exactly this.

After Guffey introduced the bill, it was sent to the Senate Subcommittee on Interstate Commerce where old battle lines between North and South, union and non-union, union and management quickly became evident. In spite of Senator Guffey's assertion that the bill was "backed by 95 percent of the men engaged in mining coal," the bill met considerable resistance. This is, in some ways, understandable for the Guffey bill was, in essence, declaring coal to be a public natural resource and therefore subject to be managed as the government saw fit, whether in war or peace. Needless to say this was a radical concept, and many objected to the bill on just these grounds. Other opponents of the measure claimed the act would help create and promote a monopoly and drag government further into the realm of private business.

Disputes regarding the bill were also raised along old sectional lines. The Guffey Act was to be based upon 1934 production records and thus any freeze in tonnage or subsequent allocation of tonnage based on the previous year's figures would necessarily favor one area over another. West Virginia, in particular, stood to gain quite a bit in this manner and other sections not as fortunate naturally protested. Concerns were also raised about how far the industry and tangential business concerns might be regulated. Many feared that if all businesses related to bituminous coal were involved then "some unfair artificial advantages, such as . . . certain railroad freight rates for Southern fields" might be maintained by the government to the detriment of other coal-producing areas.

There were two other very important problems the Guffey Act faced. First, there was the spectre of labor becoming even more powerful than it had ever been within the coal industry. The prospect of having to deal with John L. Lewis and the UMW gave many operators in the South pause. The second and perhaps most important problem was that President Roosevelt was reticent about becoming involved in the disputes over the bill. From February 7, 1935, when FDR first met with Senator Guffey to discuss the bill, until well after the Supreme Court decision voiding the NRA and codes system, the President remained noncommittal.

The nation, then, was left very much in the dark on the future of the coal industry. The coal code of the NRA was still in effect when Guffey
introduced his bill but was due to expire in April and that would leave the country with no controls whatsoever on the coal business. This was a frightening prospect for all concerned, particularly since the UMW promised a strike if the industry was allowed to abandon the wages and hours that the code imposed. The situation was frantic. On the one hand Congress was trying to report the Guffey bill and a similar measure from the House out of their respective committees and onto the floor for debate; on the other hand, the industry and the President, in his only public involvement in the coal dispute, pressed for an extension of the wages and hours clause of the NRA code in order to avoid John L. Lewis' threatened walkout.  

It was the desperate nature of the situation, with the possibility of a strike by March 31, that in all likelihood forced the Senate subcommittee considering the Guffey bill to report the act out of committee on March 13, 1935. The impasse between operators and the union demanded that some action be taken. Luckily for the country, all of the antagonists agreed to avoid any rash actions until some definitive legislation or regulation was forthcoming. For in addition to the Guffey bill's having been reported out of the subcommittee, John L. Lewis and UMW agreed to continue working without the benefit of a signed contract. On March 30, after a meeting with the operators' representatives and the National Industrial Relations Board, Lewis called off the strike due to begin on April 1. The NIRB asked both sides to continue the observance of the NRA code and wage contract until June 16, 1935, and the miners and operators agreed. In retrospect, there was little that either side could have done without incurring the wrath of the executive branch and the general public. These actions were taken by all parties with the understanding that some permanent legislation and/or regulation was imminent. In that regard, everyone involved was in for a series of setbacks, all occurring in May, 1935.

Though the Guffey bill had passed from the Senate committee to the floor, it languished there for a period of almost two months. Then on May 1, Roosevelt inexplicably appeared to kill all chances for compromise and substantive legislation when he "let it be known that he would not commit himself to the specific measure (the Guffey bill), despite his firm belief that the future of the industry rested on some plan of stabilization. FDR's lack of support for the Guffey Act in May seems bizarre in light of a number of the administration's past actions which helped to speed the bill out of committee and quieted the calls for a miners' strike. In view of the chaotic conditions of the coal situation and Roosevelt's opinion expressed to General Hugh Johnson of the NIRA
in 1934 that “he thought bituminous coal should be made a public utility,” FDR’s lack of action appears unconscionable. On May 25, however, “the White House indicated that Roosevelt would press for the coal bill, but only after Congress extended the NIRA for the rest of industry.” This Machiavellian maneuver can be the only explanation for FDR’s reticence—he wanted the NIRA to cover all of American industry and was willing to gamble, to stare down Congress, union, and operators in order to get what he desired.

The second setback to the Guffey bill was the Supreme Court decision in *Schechter v. United States* which rendered all discussion of extending the NIRA and like legislation moot. In their decision, handed down May 28, the justices unanimously declared that Congress had exceeded its powers in delegating authority to the President and code-drafting committees without providing the necessary regulations for them to follow. This, of course, sent legislators scurrying to review and revise legislation in order to comply with the Supreme Court’s decision, and Senator Guffey was no exception. On the day of the decision Guffey announced that he planned to redraft his bill. Without stating exactly what changes he envisioned, Guffey stated, “As a result of the action of the Supreme Court, the coal industry needs the Guffey bill more than ever.” *Schechter*, however, proved to be only a temporary setback and indeed may have been a blessing in disguise.

Guffey’s statements of May 27 notwithstanding, many of the bill’s supporters felt that the original Guffey Act was “constitutional within the meaning of the decision.” They therefore pressed ahead and continued their lobbying efforts in support of the measure. In an ironic twist, those who had opposed the bill, desiring a two-year extension of the NIRA instead, now had nowhere to turn but the Guffey Act or to whatever the administration might develop, and that was considered a risky proposition. Shortly after the *Schechter* decision was handed down, operators who supported the Guffey bill conferred and suggested amendments to the legislation, attempting to “strengthen the price control and enforcement provisions of the bill.” They also proposed a new composition for the Coal Commission. The commission would be comprised of five members, two operators, two representing labor, and one government official who would ostensibly look out for the public’s interests. Aside from these rather minor suggestions the Guffey bill remained essentially unchanged.

There were no real substantive changes made in the Guffey Act because there existed at the time a substantial amount of legal opinion that the act was constitutional as written. On May 31, after considerable
study on the ramifications of Schechter, a legal opinion was given to the legislative committee of the National Conference of Bituminous Coal Producers meeting in Washington, D.C. The opinion read, in part:

Your drafting committee has considered as carefully as the limitations of time have permitted the opinion of the Supreme Court in the Schechter case and the committee believes that the question of the delegation of power by Congress does not create any difficulty that cannot be met by the revised draft of the Bituminous Coal Bill. . . . If a trade or industry is predominantly interstate in character and its operations directly and to a sufficient degree affect interstate commerce, the facts in each case controlling, Congress has the authority to enact appropriate legislation on matters of regulation, including minimum wages, maximum hours of labor, working conditions, trade practices and prices.\textsuperscript{8}

While this legal opinion certainly seemed to promise success for the Guffey Act, the reality was that it still had not been submitted to the Congress for a vote—and would not be for some time, as it turned out—and thus a good deal of dickering still remained to be carried out by the members of Congress. Additionally, if the principals in the mining industry were euphoric about predictions of the Guffey bill's vindication as constitutional, John L. Lewis quickly brought them back down to earth by reminding them of a more immediate concern. The extension of the NRA wages and hours clause was about to run out. One June 1, Lewis signed orders authorizing a strike effective at midnight, June 16, and affecting some 400,000 miners in twenty-eight states. Thus the revised version of the Guffey bill, shorn of its original provisions for purchase of marginal mines and with a new Commission, new production allocations and method of determining prices, would make little difference if the UMW went on strike.\textsuperscript{9}

The immediate effect of Lewis' strike order was to galvanize the White House into a decidedly more active role than it had played up to that point. The bill was “put on the administration's 'must' list and marked for early action as President Roosevelt signified his purpose of using them as corollaries to the proposed skeleton NRA.”\textsuperscript{20} Quick action was needed from the legislators if a strike was to be averted, especially since the industry's own attempt at wage negotiations had been broken off. And while quick action was needed, it was not to be had. In something resembling a replay of the bill's earlier difficulties in reaching the floors of Congress for a vote, another two months were to pass before the bill got to the floor. In the interim, much of the work of refining the
bill and hearing objections took place in the respective committees of the House and Senate. There was little substantive debate on the floor of the Senate until August 21.

Meanwhile, time was running out on the union code agreement. By June 14, there had still been no progress in wage negotiations and it became apparent to everyone involved with the industry that the only hope of avoiding a strike lay with President Roosevelt and his powers of persuasion. In a meeting with Congressional leaders on June 13, FDR had advised the leaders to move “full speed” towards enactment of the Guffey bill. He declined to give any indication of his feelings regarding the impending strike, however.2

The next day, though, Roosevelt met with Lewis and the mine operators’ representative, Duncan Kennedy, and secured an agreement to a fifteen-day extension of the wage/hour agreement in the hope that the Guffey bill would pass by June 30. Guffey, who also attended the conference, assured FDR that the Congress would act on his bill within the next seven days. Again, the principals were indulging in wishful thinking, but the strike had again been averted.22

With the possibility of a coal strike avoided for two weeks there was still no room for complacency on anyone’s part. The Guffey bill had, according to the New York Times, “found itself as No. 1 on the President’s ‘must’ list.”23 The Congressional session had entered its twenty-fourth week and was prepared to forgo its summer recess, if necessary, to repair the damage done by the Schechter decision, and iron out other legislative priorities which included a petroleum control bill, a government contract bill, the Wagner Labor Disputes Act, a social security act, and a utility holding company measure. The President’s priorities and those of Congress were not identical and the discussion in the Senate turned first to social security legislation with a promise that the Guffey bill would be taken up directly thereafter.

The lapse, however, quickly precipitated another crisis. Again, wage-and-hour discussions between the union and operators broke down in Washington and, in the absence of substantive legislation or movement toward legislation, John L. Lewis gave orders for a strike to begin on July 1, and on June 30, operators began leaving the capital to be in place when the strike began. A very sorry state of affairs existed in the coal industry for not only were both union and management leaving town to deal with the impending strike, but it was learned by the New York Times on June 30 that the administration had had no one monitoring the union-management talks. The President learned, shortly before noon, June 30, that “Secretary Perkins had no agent present at
the joint wage-scale conferences and in this connection, it was also reported that no agent of the Department of Labor had been present at previous conferences." Roosevelt was incensed that the situation had been allowed to deteriorate so far and demanded that Secretary Perkins immediately act to prevent a strike.

John L. Lewis had already dictated the telegram ordering the strike and had ordered them sent when Assistant Secretary of Labor Anthony McGrady finally caught up with him. McGrady asked Lewis, on behalf of the President, to call of the strike and extend the truce for a while longer. Lewis was justifiably upset, asking McGrady why Secretary Perkins had not shown any interest in the "critical labor problem of the coal industry" previously. He was also angered by the fact that he had received no previous indication that the miners and the operators were to be requested to extend their truce. Further, Lewis was indignant that Secretary Perkins had not even bothered to acknowledge the various memoranda that he had sent her regarding the early stages of negotiations during March and April. Lewis agreed to call off the strike and the operators, too, accepted the extended truce, literally at the eleventh hour. Secretary Perkins', and hence Roosevelt's, lack of action and concern throughout these intense labor negotiations call into question the public's view of the FDR Administration as champion of labor and the little man.

The tongue-lashing received by McGrady at the hands of Lewis, the revelation that no one had been monitoring the bituminous industry situation for the administration, and the last-hour avoidance of a crippling strike combined to force Roosevelt to further, more direct action in support of the coal stabilization bill. On July 6, FDR sent what has been called "a frequently misquoted letter" to Representative Samuel Hill, chairman of the subcommittee of the Ways and Means, asking that the coal stabilization bill be reported out as quickly as possible. Roosevelt averred that he understood "that questions of the constitutionality of some of its provisions had arisen in the subcommittee." FDR asked that the subcommittee remember that the Supreme Court was the final arbiter of questions of that sort and that the members should not "permit doubts as to constitutionality, however reasonable, to block the suggested legislation." While some, including Johnson, have construed this to mean that FDR wanted the Congress to ride roughshod over the Constitution, Roosevelt was merely restating a principle enunciated by Mr. Justice Bushrod Washington over 100 years previously, to wit:
It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt.²⁷

Johnson and others who have criticized FDR have generally taken the last sentence of the letter, the one which refers to doubts about the constitutionality of the bill, out of context, portraying Roosevelt in an extremely bad light.

The President, seeing the parliamentary problems the Guffey Act was having in both houses of Congress—and remembering Lewis’ anger at the short notice for the last “truce extension”—wrote a letter on July 26 to management representatives asking them to agree to yet another wage-hours extension. The third extension was due to expire August 1 and Roosevelt realized that the Guffey bill would not be passed by that time. Wishing to avoid a strike and another fiasco such as the one played out on June 30, FDR asked for another extension of the contract until September 16.²⁸ The union representatives and those of the operators, all desirous of avoiding a walkout and wishing to give the Guffey bill a chance, were amenable and the contract was duly extended. Everyone involved was aware, though, that time was running out.

While the Executive Branch and the principals in the mining disputes sensed the urgent need for quick passage of the Guffey Act, the House apparently did not. For in spite of Roosevelt’s written plea, Hill’s subcommittee handed the bill back to the full committee for further work on July 31. Working feverishly the Chairman of the House Ways and Means Committee, with pressure from the White House, was able to force a vote to get the bill reported. The vote allowed the bill out “on sufferance” and by a mere one-vote margin. Those who had held against the measure were all concerned, the President’s plea notwithstanding, about the constitutionality of the bill as presented.²⁹

Open debate on the floor of both houses were perfunctory, limited merely to efforts to ascertain some of the finer points regarding wages of miners and consequent costs to consumers and to minor amendment attempts. The real work had been done behind closed committee doors until a bill was hammered out which precluded any possibility of a floor fight which might further prolong the extended session of Congress. On August 23, a joint conference committee report was issued detailing the final substance of the Guffey Act and its amendments. A vote was taken and the bill slipped through the House, 194–168. When the measure
was brought before the Senate it passed by a 47–45 margin. Despite FDR’s efforts on behalf of the bill, perhaps since they were minimal, there had been many defections from Democratic ranks in the Senate; too, nearly one hundred Democrats had deserted the President in the House vote. It was clear that there were still severe reservations about the stabilization bill.30

Even so, as was noted at the time, except for the provisions dealing with labor, much of the bill which Roosevelt signed on August 30 was gutted. Johnson points out that “allocation of production, the producers’ board, and a coal reserve idea were scrapped entirely; districts rather than a central agency would determine prices. Consumers introduced a consumers’ council; the rebate was lowered to 90 percent.”31 In short, most of the centralization and the ability to control the bituminous industry which Guffey had hoped for in January when he introduced his bill had been killed in committee, sacrificed for political expediency and assured passage. While the administration, Guffey, labor and the operators who had supported the bill publicly proclaimed a victory, it was hollow and Pyrrhic at best.

Even after the arduous, seemingly endless task of getting even a pared-down version of the original Guffey bill through Congress had been completed, the bill’s troubles were nowhere near over. James Carter, president and chief stockholder of the Carter Coal Company, immediately filed suit in the District of Columbia Supreme Court to enjoin his company from paying the coal tax. Carter’s brief asserted that the Carter Company’s business was intrastate and that therefore the tax was a penalty, and hence unconstitutional, in violation of the Tenth Amendment and the Fifth Amendment’s guarantee of due process. Although the court declared that the suit was premature and without merit due to the fact that the tax was not scheduled to take effect until November, Carter had opened the floodgates of juridical dissent. Carter’s suit and approximately eighty others that followed effectively killed any chances for coal industry stabilization through the Guffey Coal Act. Though lower courts faced the issue of deciding suits brought against the act, their decisions were ambiguous. The Supreme Court did not approach the issue until it agreed to take the case on certiorari in January, 1937. In the interim between the passage of the Guffey Act and January, 1937, little attention was paid to the act by producers and little attempt was made by the government to force compliance. (Indeed, setting up the very physical plant of the Coal Commission had been threatened by a filibuster on appropriations for the agency.) For instance, of the approximately ten million dollars in taxes assessed coal
operators under the act to May, 1936, less than $800,000 was received
by the Coal Commission.\textsuperscript{32}

When the case was decided by the Supreme Court, the Guffey Act
was declared unconstitutional. Justice George Sutherland spoke for the
majority of five and declared that the Tenth Amendment prohibited the
federal government from assuming regulatory powers not specifically
granted in the Constitution. Specifically, Sutherland stated that “the
employment of men, the fixing of their wages, hours of labor and
working conditions, the bargaining with respect of these things is strictly
local,” and the federal government had no right to assert jurisdiction or
regulatory power.\textsuperscript{33} The industry was thus left with no stabilization law
whatsoever. The \textit{Carter} decision, like \textit{Schechter}, effectively ended efforts
to regulate the industry by the federal government for the time being.
And although the same individuals who had worked and re-worked the
first Guffey bill immediately tried to submit another version to Congress
for consideration, the Senate refused to act on it until April, 1937.

It is obvious from everything mentioned heretofore that almost
everyone with even the vaguest, most tangential interests in the bitumi-
nous coal industry wanted some stabilization bill. It was simply a matter
of balancing interests among regions, union and management, and
federal and state. There were certainly many flaws in the 1935 Guffey
Act, but it was \textit{not} as simple as some antagonists in the dispute would
have had the public believe. It was not a bill that was totally pro-union,
nor was it anti-industry or anti-consumer. And while the bill’s passage
was certainly effected by the threat of a UMW strike, there had been
plenty of time to produce a bill which could have, as far as possible,
satisfied all concerned.

That seems to be the key. After the \textit{Schechter} decision, most in
government were dubious about the government’s regulatory powers.
Additionally, the age-old prejudice against the government’s meddling
in private business was still quite strong, FDR’s successful recovery
programs notwithstanding. To many, government had reached the
height of presumption by trying to declare coal a public resource and
this was expressed to the President in no uncertain terms by the
numbers of Democrats who deserted the party and the President on the
Guffey bill. Ultimately the bill was an example of “monumental
bureaucratic waste,” in its effort to regulate the coal industry’s every
facet, and since the bill did nothing to address the industry’s basic
production problems, its death made little difference to the nation. With
the coming of World War II, though, many of these same battles were
fought again, but with different results.\textsuperscript{34}
Notes


5. Ibid.


11. Ibid., March 30, 1935.


13. WJL, December 1934.


16. Ibid.


20. Ibid., June 14, 1935.


22. Ibid., June 17, 1935.

23. Ibid., July 1, 1935.

24. Ibid.


26. Ibid., p. 298 ff.

27. Ibid., p. 306.


29. Ibid., August 31, 1935.


31. Ibid., p. 225.

32. Ibid., p. 238.

33. Ibid., p. 244.

34. Ibid.