House Energy & Commerce Committee

Republicans

Joe Barton
Ranking Member

DAILY NEWS SUMMARY

Wednesday, February 25, 2009

Joe Barton

OIL&GAS JOURNAL

Santa: Interstate energy transmission debate should include gas

Nick Snow
OGJ Washington Editor

WASHINGTON, DC, Feb. 24 -- US lawmakers should consider correcting defects in current interstate gas pipeline regulations as they draft new interstate electricity transmission legislation, said the president of the Interstate Natural Gas Association of America on Feb. 23.

"INGAA agrees that the statutory framework for siting interstate natural gas pipelines should be instructive as Congress considers a remedy for the inability to modernize and expand the electric transmission grid," INGAA Pres. Donald F. Santa Jr. said in a letter to US Senate Majority Leader Harry M. Reid (D-Nev.) and four congressional energy leaders.

He noted that the Natural Gas Act of 1938 gave the Federal Power Commission and its successor, the Federal Energy Regulatory Commission, preemptive authority to authorize new gas pipeline construction and rate certainty, once a pipeline is built, which helps gas pipeline companies raise billions of dollars in private capital for new gas transmission infrastructure.

"While the NGA provides a good model, even it is incomplete, however, as a comprehensive scheme for ensuring that energy infrastructure can be constructed on a timely basis to the needs of energy consumers," Santa said.

He said that despite FERC's well-established authority under the law, states and other federal agencies "retain the ability to delay, deny, or unreasonably condition other permits required under federal law. Therefore, even though FERC may authorize the construction of an interstate pipeline based on a finding that it meets 'the public convenience and necessity,' an individual state can still veto a multistate pipeline project by denying or withholding certain permits."

Notwithstanding the interstate commerce implications of this abuse of authority granted by federal law, the current statutory framework provides no process for resolving such conflicts, according to Santa. "Consequently, we urge you to develop an effective remedy as part of electric transmission siting legislation that also can be applied to interstate natural gas pipeline siting," he said.

INGAA sent copies of the letter to Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM), ranking minority member Lisa Murkowski (R-Alas.), House Energy and Commerce Committee Chairman Henry A. Waxman (D-Calif.), and ranking minority member Joe Barton (R-Tex.).

Contact Nick Snow at nicks@pennwell.com.

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Henry Waxman

The Washington Times

Print Close

Wednesday, February 25, 2009

Obama counting on cap-and-trade

Tom LoBianco (Contact)

President Obama is banking on $300 billion to come in by 2022 from a cap-and-trade plan to reduce greenhouse gases, according to a source with knowledge of the president's proposed budget.

Mr. Obama expects money from the climate-change proposal to start rolling in by 2012, and that amount would come in over the subsequent 10 years as companies purchase carbon offsets, according to the source.

The budget's assumption of money from a revenue stream that does not yet exist provides a concrete indication that Mr. Obama expects a cap-and-trade system to be in place soon although Congress still must shape, write, debate and decide on a timetable for legislation that likely will be divisive even among Democrats.

"As someone who is very involved in the legislative debates on this, it's just very premature to be having any number like that," said Jeff Holmstead, Environmental Protection Agency assistant administrator during the Bush administration.

"I do think it will be eye-opening to a lot of people to find out that cap-and-trade is really about raising taxes," said Mr. Holmstead, who now works with the energy lobbying firm of Bracewell and Giuliani.

Cap-and-trade plans work by having the government sell to private enterprises the right to emit a certain amount of carbon dioxide or other gases. Those emission rights can then be bought by companies that wish to emit more from companies that can emit less than their targets.

A White House spokesman did not immediately return calls for comment Tuesday, although Obama spokesman Robert Gibbs confirmed to Reuters news agency that money from a cap-and-trade plan would be part of the president's budget.

Mr. Obama would not be the first president to assume in his budget a nonexistent revenue stream. President Bush included in several of his budgets the expected fees from his proposal to drill in the Alaska's Arctic National Wildlife Refuge, though those plans never materialized during his presidency, thus neither did the money.

Members of the House and Senate have yet to introduce climate-change legislation, although House Energy and Commerce Committee Chairman Henry A. Waxman, California Democrat, has said he plans to have a cap-and-trade bill passed out of his committee by Memorial Day.

Senate Majority Leader Harry Reid, Nevada Democrat, has said he expects to tackle global warming later in the summer, although Senate Environment and Public Works Committee Chairman Barbara Boxer, California Democrat, has said she doesn't expect to pass a climate-change bill until next winter.

Mr. Obama promised during the campaign to reduce carbon-dioxide emissions by 80 percent by 2050 and Democratic leaders on Capitol Hill have said a cap-and-trade system is more likely to pass both the Senate and the House than other plans, such as a carbon tax.

A spokesman for Mr. Reid said his office would wait to comment until the budget is introduced Thursday.

A spokeswoman for Mr. Waxman said the lawmaker could not immediately be reached for comment.

The New York Times

February 25, 2009

Climate bill needed to 'save our planet,' says Obama

By DARREN SAMUELSOHN, ClimateWire

President Obama lent his voice last night to the push for a mandatory cap on greenhouse gas emissions, using his first speech to a joint session of Congress to lobby for controversial legislation sure to spark a heated debate during tight economic times.

Obama campaigned for president last year with climate change and energy issues atop his agenda. And he returned to those themes yesterday, saying that a cap-and-trade bill would help spark economic recovery by giving U.S. companies greater incentive to start producing more wind turbines, solar panels, biofuels and battery-powered automobiles.

"To truly transform our economy, to protect our security, and save our planet from the ravages of climate change, we need to ultimately make clean, renewable energy the profitable kind of energy," Obama said in his **address** (pdf) to Congress. "So I ask this Congress to send me legislation that places a market-based cap on carbon pollution and drives the production of more renewable energy in America. That's what we need."

In his next breath, the president teased a key climate-related component in his upcoming budget proposal to Congress. "To support that innovation, we will invest $15 billion a year to develop technologies like wind power and solar power, advanced biofuels, clean coal, and more efficient cars and trucks built right here in America," Obama said, referring to a budget plan that would assume government revenue from the allowances sold to companies for compliance with the cap-and-trade system.

Obama also appealed to lawmakers by acknowledging the difficulties associated with voting on a climate plan that is sure to carry a large price tag. "None of this will come without cost, nor will it be easy," the president said. "But this is America. We don't do what's easy. We do what's necessary to move this country forward."

Nearly all House and Senate Democrats gave Obama a standing ovation for his climate change comments, with Sen. Charles Schumer (D-N.Y.) even turning behind him to give a high five to Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.). A small group of moderate Senate Republicans also rose at Obama's mention of cap-and-trade legislation, including Susan Collins and Olympia Snowe of Maine, Lindsey Graham of South Carolina, Mel Martinez of Florida, and John McCain of Arizona.

Just getting started

Obama's global warming comments lacked many of the specifics that will surely be at the center of the Capitol Hill debate set to unfold over the next several months. The president also stayed well clear of the looming question of whether to combine energy and climate change bills into one big package or splinter them into separate pieces.

Instead, Obama stuck to general themes, lumping energy in with health care and education as "the three areas that are absolutely critical to our economic future."

Advocates of cap-and-trade legislation welcomed the president's remarks and pledged in varying degrees that they would soon deliver a major climate bill for his signature.

"President Obama asked Congress for legislation that places a market-based cap on carbon pollution and we intend to give it to him," said Rep. Ed Markey (D-Mass.), the chairman of the House Energy and Environment Subcommittee, which will be the point of origin for the legislation.

"It is extremely helpful," Boxer added. "He has asked Congress to come forward, so we are very ready and my committee is very ready to do that."

Sen. Tom Udall (D-N.M.) predicted Obama was only getting started in his appeals for support on climate change. "When he used the term the 'ravages of climate change' he is clearly talking passionately about this issue," Udall said. "He clearly believes in this issue and I think we are going to see him push in a big way, in a bold way, to get something done."

Leaders on both sides of Capitol Hill have sent signals they too are ready to meet Obama's request.

Senate Majority Leader Harry Reid (D-Nev.) said earlier this week that he wants to hold a floor debate on a bipartisan climate bill by the end of the summer, specifically singling out McCain as a Republican who he is looking to for support. In the House, Speaker Nancy Pelosi (D-Calif.) has also pledged a first-ever climate vote this year on cap-and-trade legislation that Energy and Commerce Chairman Henry Waxman (D-Calif.) expects to mark up before Memorial Day (*E&E Daily*, Feb. 9).

But Republican leaders, as well as several rank-and-file members, suggested last night that they have no plans to line up behind Obama's climate agenda.

"We need to lead the country on the basis of a sound economic energy policy," said House Minority Whip Eric Cantor (R-Va.). "We cannot exist by thinking we can tax our way into the future. You may very well close out the manufacturing sector to this economy if we're not careful. We've got to strike the right balance in terms of energy and environmental policy."

'Cap and trade won't work'

As the climate debate proceeds, Obama's biggest challenge may be winning over lawmakers who represent districts and states with large industrial bases.

"I think that is going to fall largely along regional lines, rather than along party lines," Senate Minority Leader Mitch McConnell (R-Ky.) said last night, adding, "I personally am not going to be supporting a cap-and-trade proposal."

Indeed, several Democrats are sure to present Obama with obstacles.

Sen. Jay Rockefeller (D-W.Va.), for example, gave reporters an emphatic "no" when asked whether he thought Obama's comments about cap-and-trade legislation would build momentum for climate legislation.

"Cap and trade won't work," he said.

Rockefeller is part of the "Gang of 15," a collection of moderate senators from the Midwest, Rust Belt and West who say the climate debate to date has not taken their interests into account (*E&E Daily*, Feb. 10). Some other Democratic lawmakers in the coalition said they are still open to compromise.

"Congress is of a mind to do this, but we want to do it in the right way," said Sen. Byron Dorgan (D-N.D.).

Sen. Ben Nelson (D-Neb.), who was one of a handful of Senate moderates who helped pass the $787 billion stimulus bill earlier this month, said Obama could use his influence to prod Congress -- but should pay attention to the national mood. "Under the right set of circumstances he can, under the wrong set of circumstances, it shouldn't happen," Nelson said.

Obama also will need to work on the very same set of Senate Republicans who stood up to applaud his mention of climate change.

"Times are terrible," explained Florida's Martinez. "We cannot do something that's going to be costly to consumers or unduly burdensome on industry. So we've got to do it in a way that is reasonable and for the times."

South Carolina's Graham said he appreciated Obama's climate change position. But he found a big problem in what Obama did not mention: nuclear power. "It was a glaring omission to me," Graham said. "I'm sure the left doesn't want him to talk about it. But if you're serious about a cap-and-trade system that will work, and you have the power you need to keep a vibrant economy, wind and solar isn't going to get you there. To say otherwise is just not honest."

Sen. Tom Carper (D-Del.), a senior member of Boxer's EPW Committee and a veteran of past climate debates, may have summed up Obama's challenge the best. "On a good day," he said, "it's going to be difficult to move climate change legislation."

Reporters Ben Geman, Robin Bravender and Christa Marshall contributed.

For more news on energy and the environment, visit www.climatewire.net.

The New York Times

February 23, 2009

Obama prefers Congress to EPA in tackling climate -- Browner

By DARREN SAMUELSOHN, ClimateWire

President Obama would prefer to tackle global warming through a cap-and-trade bill but remains open to setting rules for cars and power plants as a backstop, his top energy and climate adviser said yesterday.

"The president continues to believe the best path forward is through legislation, rather than through sort of the weaving together the various authorities of the Clean Air Act, which may or may not end in a cap-and-trade program," Carol Browner told the Western Governors Association during its winter meetings in Washington yesterday. "You can get the clearest instruction by passing legislation."

U.S. EPA administrator for eight years under President Bill Clinton, Browner reminded the governors that federal climate rules are forthcoming under Supreme Court precedent set in April 2007 in *Massachusetts v. EPA*.

"If [Administrator] Lisa Jackson from EPA were here, she'd remind all of us that EPA is sitting on some authorities to regulate greenhouse gases, whether it be greenhouse gas emissions associated with automobiles or with smokestacks," Browner said. "There's a Supreme Court decision and we're coming up, I think, on the second anniversary of that decision that told EPA to do a set of things and the administration and the president has been very clear that we're going to comply with the law and we're going to comply with the science."

The prospect of EPA regulations has long been seen as a motivating force for lawmakers to act on climate legislation. And with Democratic House and Senate leaders planning legislation this year, Browner yesterday even allowed herself briefly to look beyond the Hill debate and on to a climate law's eventual implementation.

"Passing a bill will be the first step," she said. "And then we'll have to do all the rule makings, and so the actual point of compliance, if you will, will be several years out."

Interior Secretary Ken Salazar, who attended the same WGA meeting minutes after Browner, warned that the upcoming global warming debate would require careful negotiations. Still, he predicted success in 2009.

"I think a climate change bill is going to be a very robust bill and I think a difficult bill to get through," Salazar said. "But I think it's something we will get through. And I think it will happen this year."

Browner did not offer a prediction on when Congress will finish a climate bill and paused when reporters asked if Obama wanted a final global warming law in hand for United Nations-led global warming negotiations scheduled for this December in Copenhagen, Denmark.

"I don't want to prejudge the process," she said. "I think, as someone who's thought about these issues for a very, very long time, as someone who's worked on these issues for a very long time, the fact that the Congress is turning their attention to these issues in both the House and the Senate, that the leadership is speaking to these issues, I think is hugely significant."

Senate Majority Leader Harry Reid (D-Nev.) last week said he hoped to hold a floor debate on a climate bill by the end of the summer. And House Speaker Nancy Pelosi (D-Calif.) has pledged a first-ever climate vote this year on cap-and-trade legislation that Energy and Commerce Chairman Henry Waxman (D-Calif.) expects to mark up before Memorial Day.

"I think that it's an aggressive timeframe that's been laid out in the House," Browner said of Waxman and Pelosi's strategy. The White House adviser also said she expects Waxman will outline "the shape of that legislation" in the next few weeks.

Browner says it's Congress' call on energy/climate sequencing

Browner deferred to Congress on the question of sequencing the climate legislation with an energy proposal that sets a nationwide target for renewable electricity production. Reid plans to move the so-called renewable electricity standard, or RES, through the Senate this spring, separate from the climate bill. Waxman has said he would likely package the RES with his climate bill.

"They'll sort through what the right process is," Browner said. "We're going to work with them, but it's their call on what the process should be."

But Salazar, a former Colorado Democratic senator, left the strong impression yesterday that the global warming debate would need more time than the energy bill because of its complexity.

"The climate change bill I think is a little more complicated and, frankly, it's going to take us a little more time to weather the politics of that, trying to get the 60 votes that we need in the U.S. Senate to get something through," Salazar said. "And the issues are difficult. When you start talking about what kinds of allowances are going to be made for existing emitters. Or whether you're not going to allow any allowances at all. And you start talking about the allocations of billions of dollars in research and development and other kinds of things, it creates lots of issues."

Justin Cox/MEDILL

Some still unsure how lead law applies to second-hand shops selling kids' toys

by **JUSTIN COX**
Feb 24, 2009

Almost all congressmen agreed when they voted in 2008 that stricter lead laws would make for safer toys for kids.
What they didn't realize at the time was that small businesses essentially would be poisoned in the process.

Initially a response to lead-related toy recalls in 2007, the Consumer Product Safety Improvement Act requires that all toys contain virtually no lead. Selling any toy that is found to be in violation could result in a $100,000 fine or five years in jail.
The paint used on some toys – usually older or foreign-made – is more likely to contain a lead base. Lead has been shown to contribute to many health problems in children.

The law passed easily in 2008 under the banner of child safety and was expected to take effect on Feb. 10 of this year.

But that didn't happen.

Instead, confusion about how the law would apply to second-hand retailers sent business owners into a panic, which resulted in a one-year delay.

Resellers wondered: Do second-hand toys have to be tested?

The answer remains unclear, and therein lies the problem.

The Consumer Product Safety Commission says that second-hand retailers will not be required to test, but will still be expected to comply, meaning they could still be penalized for selling a toy with a higher lead content.

The congressmen who drafted the bill are calling for Consumer Product Safety Commission Chairman Nancy Nord to resign; she has said she has no intention of doing so. Among those asking her to step down is Chicago's own Bobby Rush.

"[The law] was not properly administered," said Rush's press secretary, Toure Muhammad. "The purpose is to stop a dangerous situation with kids getting hurt and killed, not to destroy small businesses."

In a letter to Nord, Rush, along with U.S. Sens. Jay Rockefeller (D-West Virginia) and Mark Pryor (D-Arkansas) and Rep. Henry Waxman (D-California), said that her department has mishandled the law and failed to put small retailers at ease.
Nord says she needs more resources from Congress before it can be properly put into effect, which she says explains the one-year delay of enforcement.
Adele Meyer, executive director of the National Association of Resale & Thrift Shops said the law sends a mixed message to business owners.

"It is not just difficult to know the lead content without testing," she said. "It's impossible."
"We do feel that this is extremely important to protect our children, but it's an overreaction by congress." said Pat Burkhart, who has owned Bearly Used, a second-hand toy store in Wilmette, for almost 20 years. "We feel like we're walking on eggshells."

TENNESSEAN.COM

February 25, 2009

Health reform fight needs White House leadership

By Dick Cowart

The talk in Washington is that the next U.S. secretary of Health and Human Services will be a governor. There are two leading candidates, and one of them is the governor of Tennessee, Phil Bredesen.

The other front-runner purportedly has a vetting issue. In an era of national health reform, it would be very favorable for the HHS secretary to be a Tennessean.

However, if the HHS secretary, whether or not a Tennessean, is a governor and not a student of congressional political power, the scales of health reform may well tip from the White House to Congress.

Students of political history will note that national attempts at health reform begin in the House of Representatives but are decided in the Senate. The current leadership of the House is distinctly liberal.

Speaker Nancy Pelosi is from San Francisco, which has now imposed health mandates on employers. House Majority Leader Steny Hoyer is from Maryland, the only state with state rate settings for hospitals.

The House Ways and Means chairman, Charlie Rangel, is from New York, which has more health regulations than any other state in the country, and with it, the most expensive health care in the United States.

The House Energy and Commerce chairman, Henry Waxman, and Ways and Means health sub-committee chairman, Pete Stark, are California soul mates who have long embraced the federalized concept of Medicare for all. Finally, the ranking physician in the House, U.S. Rep. Jim McDermott of Washington, is a long-standing fan of the Canadian health system.

In any event, the House leadership is distinctly left of center on health policy and even left of the health policies embraced by President Barack Obama in his presidential campaign.

The initial HHS secretary designate, Tom Daschle, brought enormous street credibility to the process. In addition to being a former Senate majority leader, he is a student of health reform politics and a close ally of the current Senate majority leader, Harry Reid. Because of his stature in the Senate, Daschle was in a position to stand down the House leaders and moderate their ambitions on health reform with the realities needed for Senate passage.

For that reason, Daschle was designated not only as the likely HHS secretary, but also as the Obama health reform czar. Now Daschle is out of the picture.

It has been announced that the new health reform czar will not be the HHS secretary. This post will be in the White House, and presumably not subject to the excruciating vetting now under way for all Cabinet-level positions.

In the waning days of his successful presidential campaign, Obama spent a substantial amount of his media dollars on health-care ads. He knows the subject resonates with the electorate. However, he is now aware that the president's time must be sliced and diced among the economy, a trifecta of Middle Eastern conflicts and establishing effective relationships with international leaders.

Against that backdrop, will he have the time and energy to lead the health reform debate?

If indeed there is to be a national health reform debate in 2009, the key role for the White House to consider may well be who can rein in an ambitious House of Representatives and negotiate a compromise with a divided Senate.

Indeed, the president himself could occupy that position. Absent his personal leadership, though, health reform may fall in the national agenda or may become the new mission of a very Democratic Congress.

Print article Send to a friend

Obama's pick to lead FTC slams "pay-for-delay" generic deals

25 February 2009

Jon Leibowitz, who has emerged as US President Barack Obama's choice to lead the Federal Trade Commission (FTC), says the new administration will take tougher action to stop brand-name drugmakers paying generics firms to delay cheaper medicines coming to market.

"Eliminating these pay-for-delay settlements is one of the most important objectives for antitrust enforcement in America today" and will help ensure that the nation can afford health care reform, says Commissioner Leibowitz, a Democrat who was first appointed as a member of the FTC in 2004.

"Denied the possibility of the dramatic savings brought by generic competition - which can drive prices down to as little as 10% of the brand price - American consumers, especially the elderly and the uninsured, are the victims here. So is the federal government, which pays nearly one-third of the nation's prescription drug costs overall," he said.

Now however "there seems to be a growing recognition, especially by this administration, that these deals need to be stopped," he told CongressDaily, and forecast that the Justice Department will now be "much more supportive" of legal challenges brought by the Commission against such deals that the Bush administration had been. In 2005, attempts by the FTC to have two such cases sent to the Supreme Court were not supported by the Department, and the deals' legality were upheld in appeals courts. In the following two years, nearly half of all patent settlements involved payments from the brand-name to the generic manufacturer in return for an agreement by the generic to keep its drug off the market, yet in 2004, before those decisions, no patent settlement reported to the FTC contained such an agreement. This represents "a very worrisome trend," says Commissioner Leibowitz.

However, earlier this month, as the FTC and the state of California launched a lawsuit seeking to block a "pay-for-delay" agreement between Belgian drugmaker Solvay and three generics makers – Watson, Par and Paddock Laboratories – relating to Solvay's AndroGel (testosterne gel), Commission officials said they hoped this case would make it to the Supreme Court.

The FTC will now take a two-pronged approach to the problem, said Commissioner Leibowitz. This will involve continued court challenges, plus support for legislation to outlaw these "unconscionable deals," such as the bill introduced last Congress by Senators Herb Kohl (Democrat), Chuck Grassley (Republican), and others including Senator Barack Obama, and which was reintroduced this month by Sens Kohl and Grassley as The Preserve Access to Affordable Generics Act.

Announcing the bill, Sen Kohl said that pay-for-delay deals "only serve the profits of the companies involved and deny consumers access to affordable generic drugs," while Sen Grassley added that they "appear to simply line the pockets of the companies and leave the bill to the consumer."

The senior Senate Judiciary Committee members noted that, according to a recent report from the Pharmaceutical Care Management Association (PCMA), health plans and consumers could save $26.4 billion over the next five years by using the generic versions of 14 popular drugs that are scheduled to lose their patent protections before 2010. If the allegations made by the FTC in the Solvay case are proven true, this "represents the exact type of agreement that would be rendered illegal by The Preserve Access to Affordable Generics Act," they added.

A House version of the Kohl/Grassley bill is expected to be introduced shortly by Democrat Henry Waxman, chairman of the House Energy and Commerce Committee, and the FTC is also set to publish an investigation into "pay-for-delay" agreements.

- Addressing the American Antitrust Institute during his election campaign, then-Senator Obama said that his administration would "ensure that the law effectively prevents anticompetitive agreements that artificially retard the entry of generic pharmaceuticals onto the market, while reserving the incentives to innovate that drive firms to invent life-saving medications."

By Lynne Taylor

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As AWS-3 and D-Block auctions hang in limbo, Copps' FCC aims to improve morale

Jeffrey Silva

Story posted: February 25, 2009 - 5:59 am ET

The Federal Communications Commission is unlikely to take major actions on key wireless policies anytime in the near future, as the agency awaits a new Obama-appointed chairman and as acting head Michael Copps remains laser-focused on ensuring a smooth re-set digital TV transition, even as he begins to lay the foundation for anticipated management reforms.

Indeed, owing to a confluence of factors, wireless policymaking appears to have entered into a lull of sorts that may unwittingly benefit a mobile-phone industry that — like other business sectors — is feeling the repercussions of an economic crisis. As such, the wireless space may not necessarily be ready to digest a potentially disruptive wave of regulatory and legislative changes right now.

Though it is hard to find any silver lining in these dreaded economic times, the wireless policymaking timeout might just be one.

Most serious wireless policymaking halted in December when the then-incoming chairmen of the Senate and House Commerce Committees — Sen. Jay Rockefeller (D-W.Va.) and Henry Waxman (D-Calif.) — urged Kevin Martin, chairman of the FCC at the time, to pay attention during his waning weeks to the DTV switch and to steer clear of controversial proceedings that the new Congress and administration would want to review.

The FCC was poised in December to vote on a free wireless broadband plan in the advanced wireless services-3 band (2155-2180 MHz). T-Mobile USA Inc., the smallest of the four national wireless providers, vehemently opposed agency action because of fears it would cause interference to adjacent AWS-1 spectrum it purchased for $4.2 billion at a 2006 auction. An FCC engineering analysis, which concluded AWS-3 did not pose a serious threat to T-Mobile operations, subsequently became a political hot potato itself.

Late last year, the FCC also appeared to be nearing a decision on revised rules for the re-auction of the 700 MHz D Block, following a failed attempt to attract a private-sector bidder that could partner with public safety to provide advanced broadband wireless service to first responders and consumers throughout the country. Both the AWS-3 and D-Block auctions were to be held in 2009.

Whether such auctions go forward remains to be seen.

Another piece of unfinished business from last year involves reforms to the universal service fund and inter-carrier compensation regimes. Moreover, the FCC has yet to clarify its intentions regarding litigious backup-power rules whose reporting requirements were struck down by the previous administration.

Acting FCC chairman Copps is unlikely to schedule votes on those or major proceedings as he prepares for the new June 12 DTV transition deadline, a posture he has made increasingly clear in public statements and at a recent press briefing.

At the same time, he is not standing idle. In fact, as he and the telecom industry await the arrival of a new FCC chief (presumably Julius Genachowski), Copps is quietly moving the D-Block process forward and taking steps to bring increased transparency and collegiality to an FCC that congressional Democrats and industry critics claim were sorely missing under former chairman Martin. Still, FCC deficiencies identified in a House Commerce Committee report last year and in various panel discussions in recent months indicate the desire for structural, procedural and administrative changes go beyond the shortcomings attributed to Martin's management of the agency.

"The current policymaking tools and apparatus used at the FCC are broken," said Philip J. Weiser, a professor of law and telecommunications at the University of Colorado at Boulder, in a new research paper. "Rebuilding the agency's culture will require not only the right leaders for a new era, but a systematic re-examination of the agency's institutional processes with an eye towards building a new culture. In this respect, the reshaping of how the agency operates will be equally challenging and important to the substantive issues that the agency will address in the years ahead."

Copps, 68, provides a steady hand and calming influence at a fractured FCC in need of rehabilitation and prepared for new direction. Experienced in the ways and means of official Washington dating back to his days as chief of staff to former Sen. Ernest Hollings (D-S.C.), Copps is politically savvy, erudite and thoughtful. His folksy manner — combining attributes of a tenured university professor and a statesman from a bygone era — belies a tenacity that makes Copps as shrewd and tough a political fighter as there is in town.

Given the growing chorus of calls for FCC reform — including a resolution to that effect approved by the board of the National Association of Regulatory Utility Commissioners — Copps' efforts to restore morale and improve internal workings at the agency could amount to a contribution that far outweighs any particular decision by the FCC under his stewardship. In policymaking, style and substance are intrinsically intertwined.

In what amounted to his own inaugural address late last month, Copps effectively put the FCC on the road to reform in an address to agency staff that focused not on any particular policy but rather on public servants that produce it.

"This is such an important agency. So much of America's future depends upon the nation's success in bringing the opportunity-generating tools of modern communications to all our citizens," stated Copps. "The FCC has been an essential part of shaping the communications landscape in our country for nearly 75 years. We haven't paused to think about it much, but 2009 is our Diamond Jubilee year because it was1934 when President Franklin Roosevelt — my hero, incidentally — called upon Congress to establish the FCC as part of the New Deal. And, as recently as last week in his inaugural address, President Barack Obama called on the country to build the 'digital lines that feed our commerce and bind us together.' So today we face new challenges and new opportunities that make the FCC's role more important than ever. My purpose in asking to speak with you today is not to discuss a particular FCC policy or program. Instead, it is to focus on the agency's most important asset — its people — and talk about what we can do together, as members of an elite team, to create opportunities for people through communications."

Acting FCC chairman Michael Copps

Committee

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COMMERCE

Rep. Boucher Pushes For Satellite Transmission Overhaul

Tuesday, Feb. 24, 2009
by Andrew Noyes

As lawmakers begin work on reauthorizing a law that permits satellite carriers to transmit local TV broadcast signals into local markets, House Energy and Commerce Communications Subcommittee Chairman **Rick Boucher**, D-Va., urged colleagues today to avoid getting sidetracked by what he called "collateral issues." Speaking at a subcommittee hearing, he noted that among the proposals before the panel is whether to require a broadening of the retransmission consent regime, which already lets TV stations negotiate with cable systems for carrying their programming. Other key issues at stake are whether satellite providers should offer local service to all 210 market areas nationwide as a condition for relying on licenses they were granted a decade ago, and whether there should be a general rule for signals where market areas straddle state lines, Boucher said. DirecTV already offers local coverage in 150 markets, while EchoStar provides service in 178 markets. About 30 markets lack local-to-local coverage entirely, many of which are rural areas like Boucher's own district.

House Energy and Commerce Communications Subcommittee ranking member **Cliff Stearns**, R-Fla., said the Satellite Home Viewer Act, which expires Dec. 31, should be updated and made more consumer friendly. At a minimum, he said, the statute should be revised to reflect the end of analog television broadcasting and to allow willing satellite providers and broadcasters to offer programming to households whose closest TV markets are out of state. Stearns also said Congress should resist "carry one, carry all" rules for all 210 markets. Rep. **Mike Ross**, D-Ark., said he is drafting a bill to give satellite subscribers who receive a neighboring state's local channels the choice to get home-state programming as well. Rep. **Anna Eshoo**, D-Calif., plans to reintroduce a measure requiring satellite providers to carry public TV stations. DirecTV has finalized a deal with the Association for Public Television Stations to do so without a federal mandate but EchoStar, which owns Dish Network, has not. Colorado Public Television President Willard Rowland called this a market failure and urged the panel to fix it.

Boucher said staffers from both the Energy and Commerce and the Judiciary committees, which share jurisdiction over the issue, are already working together to craft legislation. He also announced a hearing on March 12 to examine changes to the universal service program, which subsidizes telecom and Internet connections in rural and low-income areas. In addition, Boucher expressed interest in drafting broad privacy legislation this session. At today's hearing, lawmakers heard from Dish Network CEO Charlie Ergen, DirecTV Senior Vice President Bob Gabrielli, CBS Executive Vice President Martin Franks, Barrington Broadcasting CEO James Yager, Progress and Freedom Foundation President Ken Ferree, and Public Knowledge President Gigi Sohn. The Judiciary Committee is slated to hold its first hearing on the topic Wednesday.

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business

Dish: Lift TV barriers

CEO touts out-of-market viewers' needs before Congress

By Todd Shields
Bloomberg News

Posted: 02/25/2009 12:30:00 AM MST

Charles Ergen, chairman, CEO and co-founder, EchoStar Communications Corp. is seen after a speech at a CEO luncheon given by The Progress & Freedom Foundation in Washington, DC, March 4, 2004. Photographer: David Scull/ Bloomberg News. (| David Scull)

WASHINGTON — Congress should make it easier for direct-broadcast satellite companies to offer viewers programming from neighboring areas, Dish Network chief executive Charlie Ergen said.

Ergen spoke in an interview as he prepared to testify Tuesday before Congress, which is readying legislation to reauthorize the copyright law under which Dish and its rival DirecTV Group operate.

Current law restricts satellite companies from giving viewers out-of- market broadcast-network programming. For example, Dish must beam New Mexico stations to some viewers in southwestern Colorado because the Albuquerque market extends across the state line, Ergen said.

"The consumer in Colorado should get what he wants, which is Colorado news, Colorado weather, Colorado politics," Ergen said.

Broadcasters believe allowing out- of-market signals could destabilize their industry, K. James Yager, chief executive of Barrington Broadcasting, said in testimony prepared for Tuesday's hearing. Barrington owns and operates 21 television stations in 15 small to midsize markets, Yager said.

"One can easily imagine the adverse financial consequences on local stations in small markets in Pennsylvania if duplicating programming from Philadelphia stations were to be imported," Yager said in his testimony, submitted on behalf of the National Association of Broadcasters, a Washington-based trade group.

Yager said Dish and DirecTV should be required to provide local channels in all 210 TV markets to increase viewer choice and to strengthen local programming.

DirecTV offers local service by satellite in 150 markets serving 95 percent of U.S. households, Bob Gabrielli, a senior vice president, said in testimony submitted for Tuesday's hearing. Gabrielli said proposals to expand that number to all markets were among suggestions that are "hugely expensive and unfair to satellite subscribers."

Dish provides local service by satellite in 178 markets reaching 97 percent of households, Ergen said in testimony prepared for the hearing before a panel of the House Energy and Commerce Committee.

In the interview, Ergen said it would cost more to serve small markets than satellite companies could recoup through subscription fees.

Dish listed 13.8 million subscribers in its most recent report in November. DirecTV on Feb. 10 said it had 17.6 million subscribers.

Industry players spar over SHVERA

24 February, 2009 03:09:00

Broadcasters want to make sure local free over-the-air television is available to viewers on satellite in all 210 DMAs. But satellite companies would like to carry broadcasters for free (or at a fixed rate) and have access distant sources of network programming. The venue was the Subcommittee on Communications, Technology, and the Internet, part of the House Energy and Commerce Committee.

Speaking on behalf of broadcasters, Barrington Broadcasting's James Yager reminded Congress, "As Congress considers updates to SHVERA, it is vital that you uphold and strengthen the tradition of localism. Any changes should not impair the enforcement of program market agreements that are essential to local broadcast service. Furthermore, this Committee should strengthen localism by phasing out satellite licenses for distant signals. The license should be replaced with a requirement for local-into-local carriage in all television markets, which would enhance localism, programming and price competition and increase viewer choice." He suggested that the fact that 31 DMAs remain without local into local service is nothing more than a business decision on the part of the satellite companies.

Echostar's Charles Ergen said that the current level of local-into-local represents 97% of all US television households. He said he wanted retransmission fees either eliminated altogether or at least standardized, and wanted to be able to import a big-four network affiliate when a closer station pulls its signal as a negotiation ploy, or when there is significant consumer demand for an affiliate in a neighboring market.

RBR/TVBR observation: Most of the programming available on MVPDs is nationally focused, meaning that local broadcast stations are a critical source of information to local viewers that the MVPD operators cannot otherwise provide. Congress must assure the local broadcasters are both healthy and connected to viewers.

E&ENEWS PM

4. ELECTRICITY: Stimulus does not require 'decoupling' -- Markey *(02/24/2009)*

Katherine Ling, E&E reporter

Despite appearances to the contrary, the economic stimulus bill does not require states to "decouple" utility revenues from energy consumption, a key House Democrat said today.

"The language does not mandate decoupling," said Rep. Ed Markey (D-Mass.), chairman of the Energy and Environment Subcommittee on the Energy and Commerce Committee. "There are many ways to satisfy this requirement. It does not require states to implement decoupling," he said.

Decoupling is a rate-making policy that separates utilities' revenues from the amount of energy consumed in order to give utilities the incentive to pursue and support energy efficiency programs for their customers. Broadly speaking, if a state chooses decoupling policies, customers pay a flat rate on electricity as necessary for utilities to recover operating costs regardless of use.

The stimulus bill President Obama signed earlier this month provides about $3 billion in state energy grants. The Energy Department can provide the extra funds to the states if the governor has "obtained necessary assurances" that the state regulators will try to implement rate-making policies under which "utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earning opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently."

The original language in the House bill included the word "decoupling," but the National Association of Regulatory Utility Commissioners, as well as other critics who opposed the provision, were able to cut specific references to decoupling and make the provision more general, allowing state commissioners more flexibility to pursue efficiency policies. Markey said that with the changes implemented in the final bill, NARUC now supported the language in the bill.

But Republicans lashed out at the stimulus language at an Energy and Environment Subcommittee hearing today. Ranking member Fred Upton (R-Mich.) said the provision counteracted the efficiency provisions also contained in the stimulus. "With decoupling in states, you don't actually see the savings," he said. "It just takes away the incentive for folks, businesses or homeowners that are going to actually install the devices that save energy."

The stimulus language "strongly implies for governors to move to a decoupling regime," added Rep. John Shimkus (R-Ill.). "There is no confusion that decoupling is a major issue," he said.

Bipartisan support for efficiency

Today's hearing was intended to focus on energy efficiency standards for buildings and appliances and other incentives as a part of a larger solution to reduce greenhouse gas emissions.

Aside from the decoupling provision, Republicans said energy efficiency is an issue everyone supports -- to a point. "Energy efficiency is the type of issue we can work together on," as opposed to the larger issue of regulating carbon emissions, said Rep. Michael Burgess (R-Texas).

Markey has introduced a bill, **H.R. 889**, that would create an energy efficiency resource standard, which sets required levels of nationwide electricity and natural gas savings achieved through utility efficiency programs, building codes, more efficient appliances and other measures.

The bill would steadily increase electricity and natural gas savings from 1 percent of electricity demand and 0.75 percent of natural gas demand in 2012 to 15 percent of electricity and 10 percent of natural gas by 2020. It would also allow companies to sell efficiency savings through contracts in order to meet the efficiency standard.

A representative of large industrial consumers said requiring efficiency standards could seriously harm them. "Most large industrial facilities are beyond the point where substantial savings can be achieved with plug-and-play measures such as high-efficiency light bulbs, insulation or motors," said John Anderson, president of the Electricity Consumers Resource Council. "The next levels are achieved when entire industrial processes are retooled, rebuilt ... these are big ticket items requiring very large outlays of capital. Further complicating this problem is the current credit crunch."

But other witnesses said the legislation was a right step toward promoting the most cost-effective measures needed to enhance energy security and fight climate change.

Rich Wells, vice president of energy at the Dow Chemical Corp., said efficiency will also help prevent a "dash for gas" as energy producers switch from coal to natural gas if a cap on carbon emissions is passed, which would cause gas prices to skyrocket. Dow depends on natural gas not only for energy but also as a feedstock for its products.

Markey said suggestions made at the hearing are "going to lead to a lot of productive conversations with members" over the next couple of months but would not commit to saying whether the efficiency standard would be a part of climate legislation that Energy and Commerce Chairman Henry Waxman (D-Calif.) plans to move by Memorial Day, or whether it would be considered separately, perhaps with a renewable energy standard -- a required percentage of renewable energy produced by the electric sector.

"We support an RES; we support a climate bill, and we will try and figure out the best way to get them both done this year," Markey said.

LEADING THE NEWS

PRINT

Pence unveils measure on Fairness Doctrine

By Jeremy P. Jacobs
Posted: 02/24/09 08:40 PM [ET]

A leading Republican lawmaker, himself a talk show host, is seeking to prevent the Federal Communications Commission (FCC) from using taxpayer money to force broadcasters to offer contrasting views on the airwaves.

The so-called Fairness Doctrine has not been enforced since Ronald Reagan was president, and Congress two years ago voted overwhelmingly to prevent its return.

But Rep. Mike Pence (R-Ind.), chairman of the House Republican Conference, who has guest-hosted Laura Ingraham's conservative radio talk show, is concerned that on March 6, when the stopgap measure funding the government expires, Democrats could force the controversial policy to be put back in place.

The White House has signaled that it has no intention of doing so, although several prominent Democrats have indicated they would support bringing back the policy that would require a conservative talk show host like Rush Limbaugh to balance his program with liberal points of view, and vice versa.

"I think we should all be fair and balanced, don't you?" Sen. Charles Schumer (D-N.Y.) said last fall during an appearance on Fox News.

Pence has drafted an amendment he intends to offer this week to the $410 billion omnibus spending bill blocking the FCC from resuming the policy. It's unclear whether Democrats will allow the amendment to be offered as part of the debate.

"Bringing back the Fairness Doctrine today would amount to government control over political views expressed on the public airwaves," Pence, who used to host his own radio talk show, said in a statement. "The American people cherish freedom, especially freedom of speech and of the press."

Congress tried to reinstate the Fairness Doctrine, which was formulated in 1949, in 1987 and 1991.

In both of those instances Presidents Ronald Reagan and George H.W. Bush killed the efforts by threatening the veto the legislation.

Then, in February of 2005, Rep. Louise Slaughter (D-N.Y.) introduced the measure again. It was referred to the House Energy and Commerce Committee, and then that committee's subcommittee on Telecommunications and the Internet. It didn't progress any further from there.

Later that year, Rep. Maurice Hinchey (D-N.Y.) introduced similar legislation that sought to "restore fairness in broadcasting, and to foster and promote localism, diversity and competition in the media." That bill was also referred to the House Committee on Energy and Commerce and never left that committee.

But in 2007, the House voted overwhelmingly to block the FCC enforcing it with taxpayer funds.
The Fairness Doctrine has become a high profile and controversial issue recently, as several on the right have

said Democrats would push the legislation through Congress now that a Democrat is in the White House.

“While a permanent ban is ideal,” Pence concluded, “in the short-term the Pence amendment would reassure freedom-loving Americans that the national asset of talk radio would remain free from censorship for the next year.”

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February 24, 2009

Breaking News: Hilda Solis Confirmed as Secretary of Labor

Just moments ago, the US Senate confirmed President Obama's nominee for Secretary of Labor. California Representative Hilda Solis was confirmed on a vote of 80 to 17. Republicans made up the total of the 17 votes against confirmation.

Solis is a tireless fighter for women's rights, minority rights, and worker's rights. In the House, Solis is a member of the Energy and Commerce Committee, the Natural Resources Committees, and the House Select Committee of Independence and Global Warming. She is also a former chair of the Congressional Caucus for Women's Issues.

In her eight years in the California state legislature, Solis authored a record 17 anti-domestic violence laws. She also led the battle to increase the state's minimum wage and has been vital in the struggle to close the wage gap for women.

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THE WALL STREET JOURNAL.
WSJ.com

FEBRUARY 25, 2009

TARP Said to Be Ripe for Fraud

By MICHAEL R. CRITTENDEN

WASHINGTON -- The U.S. government's rescue of the financial system is vulnerable to fraud that could potentially cost taxpayers tens of billions of dollars, government watchdogs warned lawmakers Tuesday.

Neil Barofsky, the special inspector general for the $700 billion Troubled Asset Relief Program, told a House subcommittee that the government's experiences in the reconstruction of Iraq, hurricane-relief programs and the 1990s savings-and-loan bailout suggest the rescue program could be ripe for fraud.

He also said fewer than 5% of banks receiving government aid have responded to a request about what they have done with their bailout money.

The comments come as the Obama administration prepares to pour more money into the financial sector. Federal banking regulators begin a series of "stress tests" at the largest U.S. banks this week to determine whether they need greater infusions of government funds to survive a worse economic downturn.

"History teaches us that an outlay of so much money in such a short period of time will inevitably draw those seeking to profit criminally," Mr. Barofsky said.

Gene Dodaro, acting comptroller general of the U.S., told the subcommittee that a reliance on contractors and a lack of written policies could "increase the risk of wasted government dollars without adequate oversight of contractor performance."

The Treasury Department "has yet to develop comprehensive written policies and procedures governing TARP activities or implement a disciplined risk-assessment process," Mr. Dodaro said.

Mr. Barofsky didn't specify the scope or type of fraud he was talking about. Mr. Dodaro said the Treasury has made progress in its oversight of independent contractors, but that the department has identified "high risk issues that still need attention."

He said the Treasury's frequently changing strategy for dealing with the financial crisis has hurt efforts to restore stability.

Federal officials have already alleged TARP-related fraud. In January, the Securities and Exchange Commission charged a Nashville, Tenn.-based firm with defrauding investors of at least $6.5 million by claiming their money was invested in TARP and other securities that didn't exist. Mr. Barofsky's office is working with the SEC in investigating the case.

A Treasury spokesman said the agency has acted "to implement all of [the Government Accountability Office's] recommendations, and we look forward to continuing to work closely with the oversight bodies to ensure taxpayer dollars are spent wisely. The administration has already imposed new rules to enhance transparency and accountability and restrict lobbyists' influence to make sure that investments are based solely on the merits."

Write to Michael R. Crittenden at michael.crittenden@dowjones.com

Energy/Environment

The Washington Post

Satellite Crashes After Its Launch

NASA, Others Consider Next Steps

By Joel Achenbach and Juliet Eilperin
Washington Post Staff Writers
Wednesday, February 25, 2009; A02

NASA and climate researchers are weighing their options after yesterday's crash of a new satellite designed to monitor atmospheric carbon dioxide with unprecedented accuracy. A malfunction during the rocket ride toward space sent the Orbiting Carbon Observatory plummeting into the Indian Ocean near Antarctica.

"To say that it's extremely disappointing would be an understatement. This was a really important science mission," said a dismayed Edward J. Weiler, NASA's associate administrator for science.

Weiler said it was too soon to say whether NASA will attempt to launch a duplicate of the OCO, the initials of which are a nod to carbon dioxide's chemical structure: two atoms of oxygen and one atom of carbon. The satellite would have monitored not only the source points of CO_2 emissions but also the carbon "sinks," such as forests and oceans, where carbon is taken out of the atmosphere.

Weiler noted that the stimulus package recently passed by Congress includes $400 million for Earth science research, but he added: "We have to find out how many leftover spare parts there are, how much it would take to put it together. We were obviously planning for success, not failure. We have to regroup."

The satellite, built by Dulles-based Orbital Sciences, launched from Vandenberg Air Force Base in California on a Taurus XL rocket, also built by Orbital. In clear skies, it blazed toward space and appeared to be well on its way to joining a string of five Earth-observing satellites known as the A-Train.

"The mission is off to a great start!" NASA spokesman Steve Cole, who witnessed the launch at Vandenberg, wrote on a Twitter feed.

What went wrong with the $278 million mission will be the subject of a lengthy investigation, but Weiler said it appeared that the protective nose cone, known as the fairing, failed to separate from the satellite. With the extra mass still clinging to the satellite, the rocket did not have enough thrust to boost it into orbit, and the rocket and conjoined spacecraft fell back to Earth and slammed into the ocean.

"Everybody was really hanging their heads. It's a big loss. People were really jazzed about this and looking forward to this," Cole said in an interview. "We'll pick ourselves up and keep on moving. We're not stopping the global warming and carbon dioxide research because of this."

Orbital spokesman Barron Beneski said that it would be possible, in theory, to build a replacement satellite in relatively short order. "If, in the event that NASA wanted a carbon copy of it, sure, we could build that pretty quickly for them," he said.

But he said the mission failure is a terrible loss for the NASA and Orbital engineers who spent years working on the satellite.

"It's always a risk in our business that these kinds of things happen. On the other hand, Orbital really had an exceptional record over the past decade," Beneski said. Before yesterday, Orbital had been involved in 57 space launches, he said, of which 56 were successful.

Maxmilian Auffhammer, an environmental economist at the University of California at Berkeley who analyzes greenhouse gas emissions from China, said he and other researchers were hoping the mission would give them a more precise sense of the world's carbon dioxide output.

"This would have given us a much easier way to plot these emissions on a much finer scale," he said.

Antonio Busalacchi, who directs the University of Maryland's Earth System Science Interdisciplinary Center, said the mission would have produced measurements "an order of magnitude" greater than current readings, which could have helped enforce a future global warming pact. The satellite would have made about 8 million observations every 16 days, compared with 100 during that time under traditional methods.

"Whatever approach we take to mitigation, there is a need for monitoring. Like in weapons control, it's 'Trust, but verify,' " he said.

The New York Times

February 25, 2009

Economic Crisis Complicates California's Goals on Climate

By FELICITY BARRINGER

COLTON, Calif. — Only a few years ago, CalPortland planned on keeping its plant here operating as long as Mount Slover's limestone held out. For more than a century, Colton's kilns and crushing machines have been churning out cement for the streets and buildings of Los Angeles.

But the company says the plant's future is now uncertain. The recession has sent cement prices plunging, lowered profits and forced CalPortland's drivers to cut back on hours. And the company says it faces new expenses: the cost of meeting California's new requirements that manufacturers take steps to curb emissions of carbon dioxide, the main heat-trapping gas linked to global warming.

State regulators have projected that retrofitting the state's 11 cement plants would cost $220 million and reduce carbon dioxide emissions by 12 percent per ton of cement. But CalPortland's executives say it would cost more than that to retrofit the Colton plant alone.

"We don't have enough limestone left to invest $200 million," said James A. Repman, the company's president.

California was one of the first states to enact legislation to tackle global warming, with legislators passing a 2006 measure to curb carbon dioxide emissions in all economic sectors, including manufacturing, transportation and real estate development. But the state is also providing a lesson in how contentious carrying out such a law can be, especially at a time of economic crisis.

What happens in California — and in other states that have taken steps to reduce emissions — is being closely watched in Washington, where lawmakers will soon debate federal climate legislation. The Obama administration has said it plans to push for a cap-and-trade bill this year.

California's law, like federal proposals, has stirred intense fighting over whether its benefits outweigh its costs and what those costs will actually turn out to be.

"We're talking about a transformation of the way of life," said Greg Freeman, an economist with the Los Angeles Economic Development Commission. "There's going to be transitional costs. We can't have the debate about whether the cost is worth paying unless we have a realistic idea of what the cost will be."

State regulators predicted in an economic analysis last fall that the climate law would create 100,000 jobs in the state and increase per-capita income by $200 annually by 2020. The upfront cost for the first five years after the law takes effect, they estimated, would be $31.4 billion, about $8.5 billion more than the savings in those years. But if carbon-control costs were spread over the lifespan of the new equipment, the $25 billion in annual costs in the year 2020 would be more than offset by $40 billion in savings.

The state's plan includes a cap-and-trade model, in which polluters would have to either reduce emissions on their own or buy credits from more efficient producers.

At the time of the analysis, Mary D. Nichols, chairwoman of California's Air Resources Board, called them "good-news numbers."

But the projections were strongly criticized as unrealistic by the affected industries and by independent economists who reviewed the analysis — including two from the Pew Center on Global Climate Change, which supports the emission reduction goals.

In one withering review, Matthew E. Kahn of the University of California, Los Angeles said the analysis unconvincingly portrayed the law as "a riskless free lunch." Another economist, Robert N. Stavins of Harvard, said the regulators were "systematically biased" in ways "that lead to potentially severe underestimates of costs."

Now, with the recession deepening — unemployment in California is 9.3 percent — manufacturers like Mr. Repman say the recession will make carrying out the state's plan, the first stage of which goes into effect in 2010, even more difficult and could make the economy worse.

Mr. Repman said "2006 was a boom like I'd never seen," and "2008 was a bust like I'd never seen."

With profits and Mount Slover's supply of limestone both dwindling, Mr. Repman said, he cannot justify the expense of upgrading the core of the Colton plant, its coal-burning kilns, where 2,000-degree heat turns limestone into a building block of cement.

If he closes the plant when the new rules take effect, Mr. Repman said, 140 jobs will disappear.

State regulators say new jobs in renewable energy and green technologies, created as a result of the law, will more than make up for the jobs that are lost. And the law's supporters note that less economic activity means reduced emissions of heat-trapping gases, making the law's goals — cutting carbon-dioxide emissions to 1990 levels by 2020 — easier to meet.

In an interview, Ms. Nichols, of the air resources board said she thought the study's cost estimates fell within an acceptable range. The models used, she said, "showed the effect of fully implementing the plan on the California economy is minimal — it could be plus or minus, but it would be minimal."

She said the critiques by the economists, who were chosen by the state, might have contained some harsh words, but were "very typical of the kinds of things you would see in peer review of an academic study."

A new group of economists — academics and experts from the business world — is being assembled to guide planners in the next round of decisions about the rules set to take effect next year.

Chris Busch, a climate economist with the Center for Resource Solutions, an environmental group, also defended the Air Board's work.

"The excuse that more study is needed," Mr. Busch said, "has been a standard excuse going back to the earliest" discussions about combating climate change.

He added that, "now that the science is increasingly clear," opponents of climate change measures are shifting the debate to economic models "which are easier to manipulate."

Yet until the models used by economists estimating the costs and benefits of the legislation can be tested by reality, the debate is likely to continue unresolved.

"There will be job gains — there will also probably be job losses," said Eileen Claussen, president of the Pew Center on Global Climate Change. "It's not a black and white picture. Those who don't want to do something will focus on the negatives and those who do will focus on the positives."

Success

February 25, 2009

E.P.A. Is Told to Reconsider Its Standards on Pollutants

By CORNELIA DEAN

Bush administration standards for pollutants like soot are "contrary to law and unsupported by adequately reasoned decisionmaking," a federal appeals court said Tuesday.

The court ordered the Environmental Protection Agency to reconsider its standards for the pollutants, fine particulates, which are linked to premature death from lung cancer and heart disease and to other health problems including asthma.

When the agency embraced the standards in 2006, its own scientific staff rejected them as too lax. In Tuesday's ruling, the United States Court of Appeals for the District of Columbia Circuit said the agency "did not adequately explain" why the standards were adequate.

The decision is "a victory for the breathing public," said Paul Cort, a lawyer with Earthjustice, who argued the case for environmental groups. The legal effort was joined by health organizations and more than a dozen states, including Connecticut, New Jersey and New York.

In a statement, the E.P.A. said only that the standards for particulate matter are "extremely important" and that the Obama administration would review the matter "to ensure that the science and the law will be properly followed."

Researchers have drawn direct and immediate links between ambient levels of fine particulates and hospital admissions and deaths. By some estimates, tens of thousands of Americans die each year from exposure to airborne particulates.

Among other sources, fine particulates come from diesel engines, power plants, certain industrial processes and even fireplaces. Perhaps one-thirtieth the diameter of a human hair, they can make their way deep into the lungs and in some cases even into the bloodstream.

These pollutants are regulated under the Clean Air Act, but there is no generally agreed safe level of exposure. So in some ways, setting standards is a value judgment more than a scientific decision.

In 2006, agency scientists and almost all the members of its Clean Air Scientific Advisory Council recommended that the standard for long-term exposure be lowered to 12 to 14 micrograms per cubic meter of air, from 15. But the agency's administrator at the time, Stephen L. Johnson, said there was "insufficient evidence" linking the particulates to health effects.

In a statement in response to Tuesday's decision, State Attorney General Andrew M. Cuomo of New York said it "could result in preventing hundreds of premature deaths just in the New York City area annually."

It could also save "hundreds of millions of dollars" in health care costs, Mr. Cuomo said.

Ambient levels of fine particulates vary by place, season and weather. The Clean Air Act divides the nation into so-called airsheds, and regions that consistently violate air-quality standards are subject to penalties including, ultimately, the withdrawal of federal highway funds, Mr. Cort said.

The case decided on Tuesday also involved coarse particulates, like dust, and particulate contributions to haze. Agricultural groups had challenged the standards for coarse particulates as unnecessarily stringent, but the court rejected their view. And it said the E.P.A. must act to reduce the role of particulates in haze.

It was the second time in two days that the appeals court was in the news for overturning decisions made by the E.P.A. during the Bush administration. On Monday, the Supreme Court refused to consider a challenge to the lower court's ruling against Bush-era standards on emissions of mercury and other pollutants from coal-fired power plants.

Mr. Cort said the appeals court had in recent years exhibited "an increasing level of distrust" for Bush administration regulations. But he rejected the idea that its recent decisions amounted to law-making.

"This was not an activist panel of judges here," Mr. Cort said. Two of the three were Republican appointees, he said, "and this was a per curiam opinion, meaning unanimous."

Adam Vaughan
guardian.co.uk, Tuesday 24 February 2009 17.11 GMT

A larger | smaller

James Jones, Bishop of Liverpool. Photograph: Don Mcphee

The UK's energy and climate change minister Ed Miliband has joined church leaders by calling for a "carbon fast" this Lent. Along with the Right Rev James Jones, bishop of Liverpool, and the Right Rev Dr Richard Chartres, bishop of London, Miliband is encouraging the British public to cut their carbon footprints during the 40-day fast by taking steps such as removing a light bulb at home.

"This initiative shows there are ways we can make a difference that might seem like a sacrifice to begin with but can easily become part of everyday life and help tackle dangerous climate change," said Miliband. He confessed that the carbon sin he'll miss most is driving short distances into town.

Jones plans to install a solar hot water system at his home and has pledged to ensure his computers, telephones and televisions are turned off, and not left on standby every night.

"There is a moral imperative for those of us who emit more than our fair share of carbon to rein in our consumption," said Jones, who devised the carbon fast idea.

The carbon-fasting initiative is led by development agency Tearfund, which signed up 2,000 people to cut their carbon last year resulting in an estimated annual saving of 9,000 tonnes of CO_2.

The campaign group said there is an urgent need to protect poor communities hit by climate change. "Traditionally, black-majority churches do not observe Lent, however we believe in the strength of the whole church and the power in uniting for a greater cause," said City Chapel International's Jonathan Oloyede, one of the black pastors taking part in this year's carbon fast for the first time. "Many of the countries where we come from in Africa are the least responsible for climate change, yet they bear the brunt of its devastating impacts."

This year's fast is accompanied by an online campaign involving other websites such as YouTube. Tearfund's site is using an RSS feed to send daily carbon-cutting tips and social networking site Facebook is encouraging users to share energy-saving tips. Suggested carbon-cutting actions include eating no meat for a day, avoiding products with excess packaging and sharing car journeys with friends.

Tearfund highlighted 2009 as a crucial year for reducing greenhouse gas emissions, because international climate negotiations come to a head in Copenhagen this December.

Health

CongressDaily PM
NationalJournal.com
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HILL BRIEFS

Health Care Costs To Top $8,000 Per Person, Report Says

Health. Healthcare costs will top $8,000 per person this year, says an HHS report due out today, the *Associated Press* reported. The report also warns that the giant hospital trust fund run by the federal Medicare program is running out of cash more rapidly, as the recession cuts into tax receipts, and could become insolvent as early as 2016, three years sooner than forecast. At the same time, the government's already large share of the nation's health care bill will keep growing. The forecast did not take into account recent legislation adding to the government's healthcare obligations by expanding coverage to the children of low-income working parents.

CongressDaily PM
NationalJournal.com
The Twice Daily Source For News and Analysis on Congress

HEALTH

Leavitt Says Feds Must Play Key Role In Health Reform

Tuesday, Feb. 24, 2009
by David Hess

Former HHS Secretary Mike Leavitt said today the federal government must play a starring role in reforming the hyper-expensive healthcare system but not take ownership of the solution. In a wide-ranging interview with National Journal Group writers, Leavitt, a former Utah governor who ran the department during the Bush administration, also said the Medicaid program should be turned over to states, which could then enlist private insurers to provide coverage, with federal subsidies guaranteeing up to 57 percent of the cost. Insurance policies for the coverage, he said, would have to conform to minimum standards set by Congress and HHS. "We can solve this problem very quickly," Leavitt said, phasing it in over the next five years. Leavitt, who is working on a book on healthcare issues, said congressional Republicans need to get behind a unified alternative to Democratic plans for checking the soaring costs of the program, or risk being sidelined in the upcoming debate.

Ticking off "three fake cures" that now dominate the debate, Leavitt cautioned that policymakers need to dismiss all three before progress can be made. One is that "the market will fix this and everything will be fine, the second is that bureaucrats will fix it, and the other is that we just need to spend more money." He professed his faith in free-market practices but noted that "a market without rules or the capacity to resolve inequities or the capacity to subsidize those who are in hardship will not solve this problem. The important role here for the government is to organize an orderly and efficient market." Leavitt added that "government should set rules for expected behaviors within the marketplace and to cure inequities when someone cheats or treats another unfairly. There's got to be an enforcement mechanism. When a government organizes the market, it must have the means of subsidizing those in need of help, according to the norms of society -- and that's what government does best."

After that, Leavitt said, government must stand aside and let the markets work to provide the access to coverage and its benefits. The most critical domestic issue challenging the new administration and Congress, he said, is curbing the rising costs of Medicare, which drives the cost of the nation's entire healthcare system. Because of the deepening economic slump, he said, the Medicare trust fund could go broke by 2015 rather than 2019 as earlier predicted. The outlook is so dire, he went on, that no more time should be wasted on simply debating the matter. "Healthcare entitlements should be addressed now," Leavitt said.

February 25, 2009

ECONOMIC SCENE

Like Having Medicare? Then Taxes Must Rise

By DAVID LEONHARDT

Toward the end of Monday's meetings on fiscal responsibility at the White House, Senator Kent Conrad stood up and produced a little bolt of honesty. "Revenue is the thing almost nobody wants to talk about," said Mr. Conrad, the chairman of the Senate Budget Committee. "But I think if we're going to be honest with each other, we've got to recognize that is part of a solution as well."

Mr. Conrad's frankness was delivered in the cryptic language of budget experts, and many people might have missed the point. So allow me to translate:

Your taxes are going up.

They will probably go up in the coming decade, and the increase will be permanent. For a half-century, federal taxes have remained fairly constant relative to the size of the American economy — equal to about 18 percent of gross domestic product. But the 18 percent era has to end soon.

It won't end because President Obama is some radical tax and spender, either. It will end because of a basic economic reality.

Americans have made it clear that they want a certain kind of government, one that can field a strong military and also maintain popular programs like Medicare. Yet we are not paying nearly enough taxes to maintain those programs. Even major changes to the health care system — the single most important step for closing the budget gap — will not close it entirely. Taxes must rise, too.

This is a point on which serious Democrats and serious Republicans agree, even if they do so with euphemism. "We are on an unsustainable path," says Peter Orszag, Mr. Obama's budget director. Judd Gregg, the ranking Republican on the Senate Budget Committee, has said, "Revenues are going to have to go up." Douglas Holtz-Eakin and Dan Crippen, budget experts who advised the McCain campaign, have quietly acknowledged the same.

Fortunately, the coming tax increase does not have to be economically ruinous. Despite all the scary stories you've heard, the evidence that higher taxes necessarily cripple an economy is somewhere between thin and nonexistent.

When over the past 60 years did the American economy grow fastest? The 1950s and 1960s, when the top marginal tax rate was a now-unthinkable 90 percent. And when over the past generation did the economy grow fastest? The late 1990s, when President Bill Clinton briefly took federal taxes to 20 percent of the G.D.P.

The real uncertainty is how, in the current political climate, Mr. Obama will manage to persuade people that taxes must go up. In his speech on Tuesday night, he didn't even try. But he doesn't have forever to do so.

Eventually, the foreign investors lending the federal government billions of dollars every week — to make up for the current gap between taxes and spending — will need a reason to believe that those loans will be repaid. Otherwise, they will begin demanding much higher interest rates. That could create a new financial crisis.

"Something that's unsustainable, like a dysfunctional relationship, can go on longer than you expect," Mr. Orszag has said, "and then end faster and messier than you think."

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In his new book, "The Tyranny of Dead Ideas," Matt Miller nicely lays out the history of American taxes. He begins the story with Adolf Wagner, a 19th-century German economist who predicted that taxes would rise as societies became wealthier. The idea became known as Wagner's Law.

"As people grew more affluent," writes Mr. Miller, a journalist and a consultant for McKinsey & Company, "they'd want more of what only government could provide — a strong military, public order, good schools and assorted welfare benefits, services that private citizens would have trouble arranging for on their own."

The tax increases to pay for these activities do bring a cost: they reduce people's incentive to work. But history has shown that this cost isn't enormous. Taxes rose sharply in the first half of the 20th century, starting from just a few percentage points of the G.D.P., and the country still prospered. So long as the government spends the money well, the benefits from taxes — security, education, health — can far outweigh the costs.

To be sure, the federal government is not currently spending its tax revenue very well. In particular, it's wasting billions of dollars each year on health care that doesn't make people healthier. Unless Medicare's policies are changed, this waste will lead government spending to rise to 32 percent of the G.D.P. over the next three decades, from 20 percent in recent years.

But an overhaul of the health care system won't be enough to bring that number down to the current level of taxes. That's the whole point of Wagner's Law. Over time, societies will spend more of their resources on services like medical care, since they can already afford basic material comforts. And these services are precisely the sort of service that fall to the government.

Think of it this way: A tax increase isn't so much a barrier to a society becoming richer as it is a result of a society becoming richer.

To the extent that Mr. Obama has talked about raising taxes, he has focused on households that make at least $250,000 a year. And their taxes will certainly need to go up. In the last three decades, as the pretax income of the top 1 percent of earners has soared, their total federal tax rate has fallen to 31 percent, from 37 percent, according to the Congressional Budget Office.

But the problem can't be solved just by taxing the rich. That top 1 percent pays only about one-quarter of federal taxes. Once the recession ends, taxes on the not-so-rich will need to rise, too.

There are many ways this could happen. Congress could pass a consumption tax, which would bring the side benefit of encouraging people to save more. Or it could raise tax rates. Or it could get rid of the various subsidies for housing, which create an incentive to overinvest in housing. (How's that working out, by the way?)

But none of these ideas would be nearly as painless as the niceties of tax jargon sometimes imply. In the end, the ideas aren't just about "tax simplification" or a "flatter, fairer system." They're about raising taxes.

So how will it happen? The best bet, I think, is a jujitsu strategy: someone will figure out how to convert weakness into strength.

We find ourselves facing long-term budget deficits largely because we don't pay enough heed to the future. Paying less tax in 2009 is concrete. Leaving our children with a solvent government is less so.

But this same short-sightedness can be turned on itself. In 1981, President Ronald Reagan named Alan Greenspan to head a bipartisan commission charged with closing Social Security's deficit. At the commission's recommendation, Congress increased Social Security tax rates and raised the retirement age. The rub was that most of the changes didn't take effect until future years. The last of them still haven't taken effect.

Mr. Greenspan's reputation isn't what it used to be. But he was onto something here. Increasing tomorrow's taxes is much easier than increasing today's.

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MARKET PLACE

Big Drug Makers May Seek to Fill Holes in Roster

By NATASHA SINGER and DUFF WILSON

Sports fans have fantasy baseball. Drug industry analysts have fantasy mergers.

In the pharmaceutical version of the game, analysts use balance sheets to project how big-league drug companies could acquire more nimble rivals. The goal is to enhance product rosters, while reducing costs by shedding redundant staff and operations.

Dreaming up dream teams has become a popular sport since Pfizer, the world's largest drug company, said it would buy Wyeth last month in a deal valued at $68 billion. Meanwhile, the big Swiss drug maker Roche is engaged in a hostile tender offer for the 44 percent of the American biotechnology company Genentech that it does not already own.

"Cash is up but valuations are down," said David S. Moskowitz, director of research at Caris & Company, an investment bank. "We see this as a major year of consolidation."

In interviews, a half-dozen analysts suggested that three other giants — Merck, Sanofi-Aventis and Johnson & Johnson — could be in the takeover hunt.

The most talked-about targets are Bristol-Myers Squibb and Schering-Plough. "When you are trying to prognosticate, look for companies that are already collaborating, that already have a relationship with late-stage drugs or drugs that are already on the market," said Jason Napodano, an analyst with Zacks Investment Research. "Then you buy 100 percent rights to the drug by buying the whole company."

Merck is among the big pharmaceutical companies that are facing patent expirations on top-selling drugs with few promising prospects to replace them. The company, with a market value of about $60 billion, tops many analysts' lists as a potential acquirer. It has $6.8 billion in cash and short-term investments, according to the latest publicly available data.

Richard T. Clark, the chief executive of Merck, which makes the bone drug Fosamax and the Gardasil vaccine for the virus that can cause cervical cancer, did not dispute the prospects for a merger when asked about the company's plans during a recent conference call with analysts.

"There are opportunities across the whole spectrum that we look at," Mr. Clark said. In response to a reporter's query, a company spokeswoman wrote in an e-mail message that Mr. Clark was traveling and not available to elaborate.

Analysts said it was simply a question of whether Merck would pursue a more traditional drug maker, like

Schering-Plough, with which it already collaborates on cholesterol treatments and which has a market capitalization of about $29 billion. Or Merck might expand into another realm with a biotechnology company like Gilead Sciences, a $46 billion company that specializes in H.I.V. drugs.

Among other big pharmaceutical companies, GlaxoSmithKline, Novartis and Sanofi-Aventis have enough cash to be in the market for the kind of purchase that would help them restock product lines while reducing expenses through consolidation. But executives at those companies have all said they are not interested in megamergers.

“These big massive deals, I’ve been through two of them, and you’re out of the picture for three or four years trying to get those bedded down,” Chris Viehbacher, Sanofi’s chief executive since December, said in a recent telephone interview. He was referring to his 20 years at GlaxoSmithKline during which he saw the company, originally SmithKline, merge with Beecham in 1989 and Glaxo Wellcome in 2000.

“Making companies so big is one of the reasons our research and development innovation went off,” Mr. Viehbacher said. His plan, he said, is to increase Sanofi’s research partnerships with outside companies and expand into generics, vaccines and over-the-counter drugs.

As for medium-size companies, analysts said that Eli Lilly and AstraZeneca could be either buyers or sellers. But Lilly, with a market cap of about $37 billion, is still digesting its $6.5 billion purchase of ImClone five months ago, which may make it unlikely to buy anything else soon.

David Brennan, chief executive of the $51 billion AstraZeneca, recently told reporters his hands were full cutting the work force while looking for small acquisitions. Mr. Moskowitz of Caris, among other analysts, said that likely takeover candidates included Schering-Plough and Bristol-Myers, because they have fewer drugs whose patents are lapsing and have a number of drugs in the mid or late stages of development.

Schering-Plough might appeal to Johnson & Johnson, the world’s largest diversified health care company, which is sitting on $14.8 billion in cash and short-term investments. Some analysts suggested that Johnson & Johnson could buy Schering-Plough for its prescription drugs and over-the-counter brands like Claritin, and resell the cholesterol business to Merck.

As for Bristol, with a market cap of about $40 billion, the company will lose the patent on its best-selling blood thinner, Plavix, in 2011. But the company has therapies in development to fight cancer, viruses and immune-system diseases — biologic drugs that are less subject to generic competition or price pressures because they are derived from living cells instead of easy-to-copy chemical formulas.

Mr. Moskowitz said potential suitors include companies with past or continuing collaborations with Bristol, including Sanofi Aventis, AstraZeneca and Merck.

Spokesmen for Johnson & Johnson, Schering-Plough and Bristol-Myers said they would not comment on speculation over mergers and acquisitions. James M. Cornelius, the chief executive of Bristol, told analysts in late January that the company was intent on making its own strategic acquisitions or alliances. But he evaded an analyst’s question about the potential for further industry consolidation..

Whether or not more big mergers are in the offing, analysts predicted a host of smaller deals.

For example, Mr. Napodano of Zacks said it would be logical for Johnson & Johnson to pursue Vertex Pharmaceuticals, a $5 billion biotechnology company with which it already is developing an oral drug for hepatitis C.

And any number of potential acquirers might be attracted to the Dutch company Crucell, which at $1.26 billion is the largest independent vaccine maker. Crucell was left at the altar last month when Wyeth abandoned friendly takeover talks to sell itself to Pfizer. Now a half-dozen other companies are checking out Crucell, analysts say.

Meanwhile, as entertaining as the fantasy merger game may be to play, some analysts said the Pfizer-Wyeth deal could serve as a warning about the risks of playing for keeps.

Since the announcement of the deal with Wyeth last month, Pfizer's stock has dropped 23 percent, on what analysts say are qualms that Pfizer cut dividends to finance the deal and that the combined company might become an unmanageable giant.

"Honestly, looking at Pfizer-Wyeth, I think a lot of companies are fearful if they do a big acquisition, they will be the next Pfizer and would be too big to grow," said Tim Anderson, an analyst at Sanford C. Bernstein & Company. "I think any pharmaceutical C.E.O., if they weren't thinking twice about it already, they will now be thinking, 'Gee, the Street doesn't like these big mergers.' "

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February 25, 2009

F.D.A. Consolidates at Former Navy Site

By EUGENE L. MEYER

WHITE OAK, Md. — A dozen years ago, the closing of the Naval Surface Warfare Center in White Oak, a suburb of Washington, was met with a mixture of concern and hope. What would happen to the 662-acre military compound? Would the thousands of naval workers whose jobs were being shifted be replaced? Would the sprawling federal property be privately developed, or left fallow?

In the great chess game of managing the government's properties, the Food and Drug Administration has moved into the gap, with a large-scale consolidation of its previously scattered labs and offices. The $1.15 billion project — which includes 14 new buildings totaling 3.1 million square feet of labs and offices — is also expected to become the anchor of a new biotech hub just outside the Capital Beltway.

The move to White Oak, about six miles from downtown Silver Spring, Md., is part of a continuing effort by the General Services Administration, the agency that owns and leases property for federal offices, to make better use of its vast real estate portfolio. "From our perspective of asset management, it was kind of a no-brainer," said Anthony E. Costa, the acting G.S.A. buildings commissioner. "The federal government had this large site. It made sense."

Consolidating the F.D.A. and not paying rent to private landlords also made financial sense. For decades, the F.D.A. rented space at 27 separate buildings elsewhere in Montgomery County and operated under 49 different leases.

"Leasing, especially lab space, gets to be fairly expensive," Mr. Costa said. "When you rely on the private sector to supply that type of space, you're in a pretty precarious situation." A 2004 G.S.A. study concluded that the government would save $10 million annually by moving the F.D.A. from its rented quarters to a new consolidated campus at White Oak.

The site at White Oak, named for the Maryland state tree, was an overgrown and wooded field when the federal government acquired it in 1944 as the new home for the Naval Ordnance Laboratory, which developed and tested ballistics, torpedoes, mines and other explosives. The facility later combined with another naval weapons testing base and was renamed the Naval Surface Weapons Center, and then, in 1987, the Naval Surface Warfare Center, to indicate its broader military mission.

Then in 1995, as part of a major reshuffling and shuttering of military bases nationwide, the White Oak warfare center was ordered closed. The Navy wanted to sell the property, but residents and elected officials fought to keep it in federal hands. Meanwhile, a plan to consolidate the F.D.A. at another location, in northern Montgomery County, fell through.

Neighborhood activists, under an umbrella organization called LabQuest, rallied to bring the F.D.A. to White Oak. Residents argued that a large, government-run research campus would attract highly educated professionals and spur other biotech development.

“A community can be the victim or be pro-active,” said Betsy L. Bretz, the chairwoman of LabQuest and a longtime real estate agent who has lived in a single-family home directly behind the federal site for 36 years. “We decided to be pro-active. This project blends in with the community rather than overshadows it.”

Under pressure from Congress, the G.S.A. agreed to bring the F.D.A. to White Oak, demolishing nearly all of the old structures except for the former Naval Ordnance Laboratory headquarters, a low-slung, mid-century modern building. The red brick structure is the first thing that visitors see as they enter the campus from the main entrance off New Hampshire Avenue. The G.S.A. also kept the original red brick fire station, which it converted into a backup electric power plant. A wind tunnel operated by the Navy has been retained under Air Force management.

The F.D.A., which will occupy just 130 acres — much of the remaining site is wooded — began moving to White Oak in 2003 with 104 employees. So far, six new buildings have been completed and two more are under construction. The new, six-story structures, linked with pedestrian bridges and pathways, are designed to blend in with the historic brick buildings.

So far, the government has spent $680 million, a little more than half the projected cost, and G.S.A. officials say all work has been on time and on budget. Kling/RTKL, of Philadelphia and Washington, is the architecture firm. Heery-Tishman, of Baltimore and New York, is providing construction management.

About 3,700 F.D.A. employees are now stationed in White Oak working in life sciences, engineering and physics laboratories. Next month, 1,100 more F.D.A. employees will join them. By 2012, the total could ultimately grow to 8,800, more than double the number of naval workers before.

The F.D.A.’s arrival has spurred other biotech and medical-related developments in the area. The furthest along is the Washington Adventist Hospital, a 102-year-old medical institution in nearby Takoma Park known for its cardiac care center, which performs nearly 600 open heart surgeries a year. Adventist is planning to move to a new 292-bed building next to the F.D.A.

While the project is not expected to break ground until next year, Adventist and the F.D.A. signed an agreement in January to share doctors and resources.

“Most F.D.A. doctors today don’t have private practices,” said Jere D. Stocks, the president of Adventist. “But the model we’re trying to develop would give them an opportunity to do clinical practice a couple days a month in the hospital, where they can see patients, keep their skills sharp, see how equipment and drugs work with patients, and become better scientists.”

Another site, just north of the F.D.A., is being considered for the East County Center for Science and Technology, a county government-sponsored office park with a biotech focus. In January, Montgomery County — which includes White Oak, Rockville, Chevy Chase and Bethesda — paid $10 million for the 115 acres. But the site, formerly a sludge composting center, first has to undergo soil contamination tests.

“The F.D.A. is great from our perspective,” said Tina Benjamin, chief of staff for Montgomery County’s economic development department. “It helps balance the jobs-to-residents ratio on that side of the county.”

But perhaps the most ambitious proposal is coming from Percontee Inc., a local real estate development company that owns a 185-acre parcel northeast of the F.D.A. property. Percontee has yet to submit formal applications to Montgomery County, but its draft proposal envisions a mixed-use development that includes 2,000 townhouses and condos, more than 2 million square feet for biotech firms, 200,000 square feet of retail space and 50 acres of parkland.

Though Percontee’s project is in its early stages, the G.S.A. has begun building an access road through the property to the northeast side of the F.D.A.’s campus. “The F.D.A. is the linchpin in making this have a biotech focus,” said Jonathan Genn, the executive vice president of Percontee. “It is all driven by having the one gold standard of public health, the F.D.A.”

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Milberg's New Hire

The plaintiffs firm has an eye for talent.

Plaintiffs lawyers seem to operate on a different ethical plane than mere mortals, in case you hadn't noticed. Consider the latest news from the notorious Milberg law firm.

The class-action giant only last year settled a federal indictment over charges it had run a 30-year kickback scheme. The firm paved the way for this nonprosecution agreement by repudiating three partners -- Melvyn Weiss, David Bershad and Steven Schulman. Milberg claimed it had been in the dark as to their "illegal activities," and all three men later pleaded guilty to felonies.

Only later did we learn and report that Milberg the law firm had agreed to pay indicted partner Melvyn Weiss a slice of the firm's future lawsuit winnings, and was also picking up his legal fees. The supposedly remorseful firm made sure its founding felon would receive this cash even if he went to prison -- which he did. The Justice Department later admitted it had inexplicably sanctioned this sweetheart deal.

Meantime, as a felon, Melvyn Weiss had to obtain court approval for any fees for legal services he provided. In July of 2008, New York Supreme Court Judge Herman Cahn was asked to pronounce judgment on the Milberg payoff. A month later he agreed to let Melvyn Weiss have his booty, even as the judge acknowledged that law firms are generally barred from sharing legal fees with nonlawyers, and that Melvyn Weiss had forfeited his right to practice law.

And now for the latest news: In December, Judge Cahn retired from the bench. Last week, the renamed Milberg LLP announced it had hired a "distinguished" new attorney: Herman Cahn. In its press release, the firm listed his most notable cases, though omitting any on which he'd ruled on its behalf.

To recap: A class-action firm's name partners are nailed in a 30-year fraud. Class-action firm rewards lead perpetrator with share of future earnings. State judge sanctions the earnings deal. Class-action firm hires state judge. We'll let our readers decide what they think of this "fact pattern," as a plaintiffs lawyer might put it.

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