

The Boston Globe

Seeking bailout while battling emissions curbs

Auto industry's fight criticized; House backs plan

By Scott Helman, Globe Staff | December 11, 2008

The top executives of the Big Three automakers drove to Capitol Hill last week and pleaded with lawmakers to bail out their beleaguered industry with billions of dollars in taxpayer money.

At the same time, just a few blocks away at the DC Circuit Court of Appeals, lawyers for the auto industry were hand-delivering their latest court filings in just one of several costly lawsuits and legal actions that the companies continue to press against states that have tried to impose stricter car emissions.

Those dueling actions illustrate how the automakers are asking Washington for financial help to retool their operations while spending millions of dollars on litigation to block attempts to force them to make "greener" vehicles with lower emissions and better gas mileage. They have also, in pursuing various legal challenges, compelled California, Vermont, Rhode Island, and other states to spend millions in taxpayer money altogether battling them in court.

Such litigation, which is still pending in four separate federal appeals courts, emerged this week as a central sticking point in congressional negotiations over what concessions to extract from General Motors, Chrysler, and Ford in return for \$14 billion in federal loans and lines of credit.

House Democrats, led by Speaker Nancy Pelosi, initially wrote a provision into the bill that carmakers abandon their legal fights in exchange for federal funds. But House leaders yesterday dropped that demand, partly out of concern about its constitutionality and partly to win support from the White House and get the package passed this week.

Last night, the House approved the bill 237-170. Bush administration officials, however, ran into staunch opposition from Senate Republicans, putting the bailout plan's fate in doubt.

Critics say that the automakers' aggressive and expensive legal actions represent another example - akin to the CEOs arriving in Washington in private jets last month in their

initial pleas for financial assistance - of doing one thing and saying another.

"They tell the public, 'We're working hard on the technology, we're trying to get you fuel-efficient cars,'" said Marc Melnick, a deputy attorney general in California. "At the same time, they've literally spent millions upon millions suing us and other states."

He added, "If they would have used that money for their engineers, they'd be in much better shape."

Massachusetts Attorney General Martha Coakley said she and her counterparts in other states, who had pressed congressional leaders to insist that automakers drop legal challenges as part of any deal, want the car industry to recognize that it must reinvent and stop "spending assets on bringing legal claims that at this stage seem, if not frivolous, not necessarily worthwhile."

"There are lots of other very important things states could be doing, both at a state level and at a federal level, instead of fighting these battles," Coakley said yesterday.

The auto industry argues that states, in pushing tougher emissions rules, are effectively trying to impose their own fuel-economy standards, which federal law says is the exclusive authority of the US government. Charles Territo, a spokesman for the Alliance of Automobile Manufacturers, which represents the Big Three and other major automakers, said it would be "disingenuous" to link the companies' current financial peril with the lawsuits.

"Fundamentally, I think we all agree that fuel economy needs to increase and that greenhouse gases need to be reduced from autos," he said. "It's just, how you do that? And we believe that a comprehensive national policy is better than a state-by-state patchwork."

Asked whether the automakers would press ahead with their legal challenges, he said, "That's something that we'll have to discuss."

Indeed, just yesterday, lawyers representing the alliance, GM, and Chrysler filed a motion in federal court in Rhode Island indicating that they intend to move ahead with a challenge of a judge's ruling against them last month, seeking a procedural victory they hoped would benefit them in their other legal battles around the country. That latest court filing left officials in the involved states and environmentalists incredulous.

"The very auto manufacturers who are going to Congress telling them that they're going to restructure, that they're going to become a viable industry, and begin to make greener cars, are pursuing these legal challenges against states and really forcing taxpayers to pay them twice," said Tricia Jedge, special assistant attorney general in Rhode Island.

At issue is the authority the federal Clean Air Act grants California to set its own vehicle emission standards separately from the US government.

With approval from the Environmental Protection Agency, California can and often has set stricter standards. Other states - including Connecticut, Maine, Massachusetts, Rhode Island, and Vermont - are permitted to, and have often, followed California's lead.

The auto industry has fought hard against the states' latest efforts, challenging the proposed new regulations in California, Rhode Island, and Vermont. Those cases are still pending, as is a separate lawsuit in Washington state that California, joined by a host of other states and environmental groups, filed against the EPA after it rejected last year California's bid to enact stricter emissions rules.

"The fact that the Detroit Three are still in litigation trying to block tough emissions standards reflects that fact that the executives of the companies still don't get it," said US Representative Edward Markey, a Democrat from Malden. "Instead of fighting the fuel-efficient, lower-emissions technologies of the future, they should be embracing the future."

But Territo, noting that gasoline has dropped to below \$2 a gallon, said automakers do not necessarily believe that consumer trends are heading in the direction of smaller, fuel-efficient vehicles; he cited national statistics showing that consumers bought more trucks than cars just last month.

"It's also important to recognize that for manufacturers to make money, they need to produce vehicles consumers are willing to purchase," Territo said.

Though the language in the bailout bill specifically referencing the industry lawsuits was taken out, the House and Senate versions of the legislation include provisions that would require carmakers to adhere to emissions limits, fuel-efficiency standards, or both. The House version appears to leave open the possibility that carmakers would have to follow state standards as well as federal ones.

The carmakers initially sought far more than the \$14 billion, but the White House opposed setting aside new money, and Democratic leaders in Congress agreed to instead tap an existing fund set up to help the industry overhaul their factories to produce more fuel-efficient models. The amount available under the plan dropped from \$15 billion to \$14 billion after congressional negotiators kept some money in the original program.

Regardless of what happens with the bill, Democrats say they are optimistic that once President-elect Barack Obama takes office next month, he will direct his EPA to approve California's emissions regulations, paving the way for other states to apply them, too. Coakley and others said they would keep pushing throughout the bailout process until automakers accept that stricter environmental and efficiency standards are unavoidable.

"We're going to continue to press this point," she said.

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