CLOSED, FOR BUSINESS

The Boston Globe

Energy bill a special-interests triumph

By Susan Milligan, Globe Staff | October 4, 2004

Second of three parts

WASHINGTON -- Robert Congel has grand plans and a heady vision for his upstate New York shopping complex. Billed as the biggest mall in the world, the yet-to-be-built DestiNY USA would be filled with 400 retailers, thousands of hotel rooms, a 65-acre glass-enclosed indoor park, a rock- and ice-climbing wall, and a theater suitable for Broadway shows.

And if its patrons in Congress get their way, the mega-mall would be partially funded through the federal energy bill, which would provide $100 million in public money. A fervent lobbying campaign by Congel paid dividends on Capitol Hill. When members of the House voted last winter to ramp up domestic oil production, they also voted to help Congel build the giant mall through tax-exempt "greenbonds."

The greenbonds initiative -- so named because the developments it funds are supposed to be energy efficient -- was among scores of items stuck into the energy bill by lawmakers meeting behind closed doors. These provisions had no official sponsors and weren't part of the original documents approved by the House and Senate, but were added later by unseen hands as the 816-page bill was crafted in a secret conference.

Intended to lay out an energy policy for the nation for the first time in more than a decade, the energy bill became a cash bonanza for corporate interests in and out of the energy arena. The bill, which is stalled because of a Senate filibuster but which is still one of President Bush's top legislative priorities, features initiatives to encourage production of new and existing energy sources. But it has also become a phonebook-sized symbol of modern Washington lawmaking, in which policy is driven by those who have money, power, and access to a relatively small group of decision-makers.

A Globe analysis of tens of thousands of pages of lobbying records shows that entities with a stated interest in energy policy spent $387,830,286 lobbying Washington last year. They also paid tens of millions of dollars in campaign contributions to officials putting together the package at the White House and on Capitol Hill.

The Globe analysis shows that the corporations and others, including some universities, were rewarded in the bill with tax breaks, construction projects, and easements of regulations that would save them much more than they spent making their arguments to the government.

In some instances, the beneficiaries were specific companies like Home Depot, which spent $240,000 lobbying in hopes of gaining tens of millions in savings. Home Depot -- whose PAC contributed the maximum $5,000 to Bush's 2004 campaign and whose employees have contributed $226,400 to Bush and the Republican National Committee this cycle -- benefits from a two-paragraph section in the bill to eliminate tariffs on Chinese ceiling fans. The change would save Home Depot and other companies a total of $48 million, according to the bipartisan Joint Committee on Taxation.

In other instances, entire industries spent tens of millions of dollars to leverage billions in government funding and deregulation.

The nuclear industry, which spent some $71,405,955 lobbying Capitol Hill, would get $7.37 billion in tax breaks and projects, including federal funds to construct a $1 billion nuclear plant in Idaho. The plant, which would be the first nuclear plant commissioned in decades, would also benefit the hydrogen fuels industry, because the nuclear facility is intended to create hydrogen fuels.

Several large power companies, which spent tens of millions lobbying, won a historic deregulation of their industry that would strip away controls dating from the Depression on how they spend their money and allow them to become conglomerates -- with little recourse for ratepayers if the companies' speculative investments go sour.

Bush's biggest supporters would profit handsomely from the bill. Sixty of Bush's 400 Pioneers and Rangers -- those who have committed to raising at least $100,000 and $200,000, respectively, for the Bush-Cheney reelection effort -- would benefit from the tax breaks, subsidies, and deregulation in the bill, according to an estimate by the Sierra Club.

Massey Energy of West Virginia -- whose director, James H. "Buck" Harless, is a major Bush fund-raiser --would get hundreds of millions of dollars in loan guarantees for a coal gasification plant. Harless served on President Bush's energy transition team, a precursor to Vice President Dick Cheney's Energy Task Force, which developed the critical blueprint for the energy package on Capitol Hill.

"The problem is that this has just turned into more of a special interests bill," said Charlie Coon, an energy specialist with the Heritage Foundation, a conservative think tank. "The bottom line is, it's not going to provide the power that's needed for the economy so people can turn on their lights. It's such a farce."

Behind closed doors

The construction of the bill reflects the way business is done in Washington in 2004: With Republicans enjoying control of both chambers of Congress, plus the White House, GOP leaders in the House craft giant bills behind closed doors, freezing out the minority party and squelching dissent from moderate Republicans and lobbyists whose agendas are unsympathetic to the GOP's goals, according to interviews with members of both parties and former House members.

And while other bills have included their share of earmarked projects or handouts to various industries or interest groups, the energy bill is considered by consumer and environmental groups to be one of the most extreme examples of excessive corporate giveaways.

"What's really amazing is how a combination of energy industry, oil and gas industry, utility industry guys, coal industry guys, through a whole host of policy decisions -- through the Environmental Protection Agency or the energy bill -- literally got billions of dollars in payback for millions of dollars" in contributions and lobbying expenses, said Mark Longabaugh, senior vice president for publicaffairs for the League of ConservationVoters.

The bill first began to come together as an outgrowth of Cheney's energy task force, a committee of Washington officials that met in private to draft a sweeping national energy policy shortly after Bush took office.

A study by the nonpartisan General Accounting Office last year found that the energy task force received advice from private "energy stakeholders," mainly the petroleum, coal, nuclear, natural gas, and electricity industries. The report said it was unable to determine the extent of the influence these industries had on policy, because of the limited information made available to the GAO.

But other records released under a court order show that 15 energy-related entities known to have had contact with the task force ended up winning provisions in the energy policy that would benefit them.

The Edison Electric Institute, which had contact with the task force 14 times and spent $12 million lobbying Washington last year, secured a historic deregulation of the electricity industry analysts believe could be worth billions of dollars.

The Nuclear Energy Institute, which won billions in tax credits and projects, had 19 contacts with the task force and dumped $1,280,000 into lobbying efforts in 2003. The nuclear industry also would benefit from an extension and expansion in the energy bill of the Price Anderson Act, which caps the financial liability nuclear power plant owners face in case of a nuclear accident. While no new nuclear power plant has been commissioned in decades, the bill envisions a rebirth of the controversial power source.

Southern Company, an electricity company that spent $990,000 on lobbying, would benefit from relaxed regulations on emissions of mercury, a toxin released from power plants. Southern's executive vice president and a paid lobbyist met with the task force, according to records released pursuant to a lawsuit filed by the Natural Resources Defense Council. The Environmental Protection Agency, which is set to issue final rules next year, estimated that the deregulation of mercury rules would save US power plants a total of $2.7 billion.

Members of the American Petroleum Institute, which had contact with the task force six times and spent $3,140,000 lobbying last year, would be eligible for billions in tax breaks and subsidies to encourage domestic oil production.

Environmentalists, who were shut out of the task force, won little in the final package after spending a small fraction of what the energy industry spent on lobbying. The League of Conservation Voters, for example, spent just $46,516 on lobbying last year; the Natural Resources Defense Council spent $920,000, and the Union of Concerned Scientists $150,000, according to an analysis of lobbying reports.

Industries that had contact with Cheney's task force had a critical advantage, said Larry Noble, an analyst for the Center for Responsive Politics, because they were able to plead their cases in the early stages of the development of the energy policy.

"They have gotten what they wanted from the first day," Noble said. "What all lobbyists know is that it's important to be there when the policy is being drafted, before the laws are being written. By the time the bill's written, it's a little late. You're playing a defensive game."

The conference committee

After Cheney's task force issued its recommendations, the job of drafting the bill went to House and Senate committees, where members of the Republican majority kept many of the proposals intact. Then, in hopes of forging an agreement between the House and Senate, congressional leaders appointed members to a conference committee.

But the conference committee began adding projects that had never appeared in either version of the bill. And lobbyists peppered members of the committee with requests to get favored projects, including Congel's mall, appended to the legislation.

The addition of projects like Congel's especially irks government-waste watchdogs. Even though DestiNY USA had promised to be a model of energy efficiency, critics wonder what a shopping mall has to do with forging a national energy policy.

The greenbonds initiative wasn't part of the original House or Senate bills that went through public hearings and floor debate. It was added by the conference committee, a panel that excluded Democrats for all but two of the meetings held to craft the bill. The final, massive bill was released on a Saturday, giving House Democrats and any Republicans not made privy to the negotiations barely three days to study it before being asked to vote on it on the House floor.

Representative Edward Markey, a Malden Democrat who is a veteran member of the Energy and Commerce Committee, said he was forced to follow developments in his own committee's bill by talking to Washington lobbyists.

"We could not keep track of what was going on," Markey said. "All we had were leaks. What they did on this energy bill was unprecedented. It was disrespectful of the Democrats, but more importantly of the environmental and consumer groups of the country."

Congel himself is a successful, if controversial, developer who Forbes magazine estimates is worth some $700 million. Congel and his company, Pyramid Management, were sued by dissident partners in 2000 for fraud; the case is still pending. Pyramid ultimately paid more than $800,000 back to a tenant company, The Limited, which claimed the developer had overcharged it by submitting phony tax bills. State and federal prosecutors took no action against the company.

Congel and DestiNY USA failed to respond to repeated requests for comment.

Three other shopping mall projects -- one in Georgia, one in Louisiana (home of the former chairman of the House Energy and Commerce Committee, Republican Representative Billy Tauzin), and one in Colorado -- would also benefit from the greenbonds proposal, although it takes some sleuthing to figure that out from the language in the bill.

Called the "brownfields demonstration program for qualified green building and sustainable design projects," the greenbonds section in the bill makes no mention of the specific projects or states. But the guidelines conform to no other projects, according to both congressmen and watchdog groups who have studied the bill.

"They weren't named, but everyone knew who they were, based on the language," said Keith Ashdown, vice president for policy at Taxpayers for Common Sense. A Republican senator joked that the bill might as well have required that one of the projects be located in a venue "whose nickname is the 'Cajun State,' " to underscore that one of the projects would be in Shreveport.

Congel has been an aggressive advocate for government financing of his project. He set up a political action committee, the Green Worlds Coalition Fund, which has raised $82,897, much of which has been contributed to Bush's campaign and the campaigns of congressmen key to the energy bill. In addition, Congel, his family, and employees of DestiNY USA and Pyramid contributed an additional $69,084 to congressional campaigns and to Bush, according to filings analyzed by the nonpartisan Center for Responsive Politics.

The project's proponents also have made a big investment in lobbying, spending $140,000 last year and $60,000 this year to convince Congress -- which already gave DestiNY USA $1.7 million last year for construction around the development site -- to approve the greenbonds proposal.

Meanwhile, Congel labored to help key lawmakers. Congel, his family, and business associates gave heavily to Representative Bob Beauprez, a Colorado freshman who also wants financing assistance for a development project in his district. Congel also hosted a fund-raiser attended by Cheney.

While most of Congel's and DestiNY USA's campaign contributions went to Republicans, the project's advocates have also looked out for New York's Democratic senators, Hillary Rodham Clinton and Charles Schumer, both of whom received contributions from the Green Worlds PAC and from Congel himself.

Schumer, in a seemingly contradictory tactic common in Washington, fought mightily to get the greenbonds provision included in the energy bill, even as he was also battling to defeat the entire bill.

"I thought it was a good project," Schumer said of the $2.2 billion DestiNY USA, which developers claim will bring more than 100,000 long-term, tourism-related jobs to economically troubled upstate New York.

Schumer said he nonetheless opposed the energy bill because it gave relief from liability to producers of a gasoline additive that has poisoned groundwater in New York and other states.

On the House side, Representative James Walsh, a Syracuse Republican, has been championing the DestiNY project, which would be located in his district. Walsh, who said he went to high school with Congel, defended the project as a valuable prototype of how a mall can be powered with renewable energy such as solar power.

And he said the jobs would be important to his district.

"This is the only guy knocking on my door willing to spend $2 billion," Walsh said.

But congressional waste-watchers and environmentalists wonder why the federal government should be helping a multimillionaire developer build a shopping mall and resort.

"It's apparent that the only green Bob Congel has ever been interested in is the green in his back pocket," said Chuck Porcari, communications director of the League of Conservation Voters.

When the energy bill stalled in December, Senator Pete Domenici, the New Mexico Republican who heads the Senate Energy and Natural Resources Committee, pared it down to make it more palatable to an unconvinced Senate. A newer version, which has not officially replaced the original bill, does not include the greenbonds provision.

But with Schumer's help, DestiNY USA may get another shot at the federal money pie. Schumer and Senator Zell Miller, a Democrat whose home state of Georgia is also vying for a greenbonds project, introduced an amendment to add the projects onto a corporate tax bill with a higher likelihood of gaining congressional approval. A conference committee will begin writing that bill today.

"It's like multiple warheads: Let's try the energy bill, let's try the transportation bill, let's try the appropriations bill. If we fire all these warheads, we'll be able to hit something," said David Williams of the nonpartisan Coalition Against Government Waste.

Fattening the bill

Congel's project wasn't the only one to find a new vehicle for funding, despite the hold-up of the entire bill.

Senator Charles Grassley, an Iowa Republican who heads the Senate Finance Committee, and whose support for the energy bill was critical because of its tax provisions, wanted $50 million for a simulated rain forest in his corn-country state. Supporters said the project would be educational, but it was deleted before the energy bill went to the House floor.

But Grassley got what he wanted in January, when the project was slipped onto an omnibus spending bill meant to fund federal agency operations for 2004. "Most egregious projects, if they are backed by a powerful politician, have nine lives," Ashdown said.

Backers of the energy bill acknowledged that it was fattened with local projects, but said such inclusions were often needed to cobble together a voting coalition. "That's a function of the legislative process," said Frank Maisano, an energy industry lobbyist with the firm of Brace and Patterson.

And the battle over the energy package surely has a philosophical dimension. Those who support it argue that the nation must produce more of its own energy to wean the country from reliance on foreign oil. Companies must be offered tax credits and subsidies to encourage that production, say industry officials and some lawmakers and analysts, because energy exploration and development are pricey undertakings.

While environmentalists like to demonize the profitable oil industry, Maisano said, oil companies need financial incentives to search for reserves in untested areas. For example, some potential oil reserves are more expensive to get at, because they are deep in the earth; without a tax break, most companies wouldn't take the financial risk of drilling there, he said.

But critics, who include many fiscally conservative Republicans along with Democrats, insist that the tax breaks got out of hand during all the closed-door meetings, with many benefiting interests as narrow as individual companies. When the original version of the bill was finished, it had an estimated $20 billion in tax credits and subsidies to the energy industry.

But analysts believe the biggest financial windfall for the industry is in the deregulation provisions, which energy companies spent hundreds of millions of dollars to secure.

First on the to-do list was the elimination of a longtime regulation called the Public Utility Holding Company Act. Little known outside the energy and financial world, the regulation is a critical issue for the electrical industry, whose vast team of lobbyists persuaded negotiators in Congress to eradicate the law. In the hundreds of lobbying reports filed by those seeking to influence the energy bill, getting rid of electricity industry regulations shows up 98 times.

Electricity interests spent millions of dollars trying to kill the law. The Edison Electric Institute, which represents the electricity industry, spent $12,540,000 on a team of 35 lobbyists at its own shop and at 12 other firms to lobby Congress, the White House, and federal agencies against PUHCA and on other energy matters. Individual electricity companies and others against the landmark regulatory law dumped another $56,420,670 million on lobbying last year, according to reports filed with the clerks of the House and the Senate.

Nor has the industry been stingy in handing out campaign contributions. Electricity industry PACs and executives gave a total of $7,733,941 for the 2004 election cycle, making the industry the 19th biggest contributor, according to the Center for Responsive Politics. Tauzin, the powerful former chairman of the House Energy and Commerce Committee, was especially enriched, receiving more than $150,000 in campaign funds from the energy industry as a whole, including nearly $76,000 from the electricity sector, according to the center.

The effort was successful: Language killing the watershed regulatory law is included in all versions of the energy bill now on Capitol Hill. If the measure becomes law, both supporters and critics anticipate an explosion in energy investments.

But where financiers see investment opportunities, consumer advocates see future Enrons in the making, because the law was intended to insulate utilities from the kind of energy-trading schemes that caused the Houston-based Enron to collapse in the greatest bankruptcy in history. Get rid of the rules restricting cross-investment by utility holding companies, consumer advocates say, and the country faces an energy and stock market debacle much like the one that led to the creation of the public utilities act.

The law's roots go all the way back to the Great Depression and the stock market crash of 1929. The then-nascent electricity industry was largely owned by a small group of holding companies, which used their reliable receipts from selling electricity to invest in riskier ventures.

When those ventures faltered, the holding companies imploded, and 53 electricity companies went bankrupt; the collapse helped deepen the Great Depression. Consolidation in the industry also allowed holding companies to manipulate the market and overcharge consumers for power.

After an investigation and hearings, Congress approved the PUHCA regulations in 1935, imposing historic controls on energy holding companies. Now, however, energy industry spokesmen say the law is outdated and so onerous that investors are discouraged from putting money into electricity.

"This is a fairly capital-intensive business. The repeal of PUHCA would serve to potentially encourage capital to flow back into the energy market," said Pete Sheffield, a spokesman for Duke Energy, which once employed Andrew Lundquist, the director of Cheney's energy task force, to lobby for the elimination of the law.

The Clinton and Bush administrations have already weakened the regulations by allowing companies to be exempt from certain PUHCA rules. But eliminating the law entirely could have a catastrophic effect on both the financial markets and consumers, critics say.

"It's the only thing between us and a cartel," said Lynn Hargis, a former staff attorney with the Federal Energy Regulatory Commission who now works for the watchdog group Public Citizen.

Deleting PUHCA from the law books would put an estimated $1 trillion in energy assets in play, she said, presenting enormous implications for both the energy sector in particular and the financial markets as a whole.

Deregulation, she predicted, would allow more episodes like the Enron scandal, because holding companies could move capital around and put the health of electricity providers at risk.

Additional deregulation

Lobbyists for energy interests succeeded in getting far more than financial deregulation, however.

The current bill calls for deregulation of laws protecting air quality. One provision would ease rules on ozone, which produces smog. The language, which was not in either the original House or Senate bill, would not only lower the standards set in the Clean Air Act for ozone production, but would extend the time industry has to comply with the rules. The provision, added by the conference committee, would largely benefit oil refineries.

Language was also inserted in the bill that exempts the oil and gas exploration industry from sections of the Clean Water Act; under the bill, such companies would not be penalized for contaminating public waterways. The provision would give oil and gas construction companies a "free pass" to avoid clean water laws, making them the only construction companies not subject to such regulations, said Representative Bob Filner, a California Democrat.

Energy lobbyists also persuaded the Bush administration to weaken proposed rules on mercury, a toxin released in the air by coal-fired power plants. The proposed new rules would ease emissions limits and would give the power plants more time to comply, a combination environmentalists say will do little to protect people from mercury contamination in the water and in fish.

The Bush administration's view of the mercury threat is far tamer than that of its predecessor.

When former President Clinton's EPA issued a December 2000 statement announcing that reductions in mercury emissions would be required for the first time ever, the agency described mercury as a "harmful" substance that "has been associated with both neurological and developmental damage in humans. The developing fetus is the most sensitive to mercury's effects, which include damage to nervous system development."

But the Bush administration's EPA has taken a more relaxed view, describing mercury on its website as a "naturally occurring element that is present throughout the environment." While mercury exposure should be "treated seriously," the site says, "health problems caused by mercury depend on how much has entered your body, how long you have been exposed to it, and how your body responds to the mercury."

The energy interests and their supporters in Congress say the provisions come down to a matter of philosophy, not lobbying clout; industry spokesmen say too much regulation puts financial strains on companies and makes it harder for them to update their operations with more environmentally sensitive equipment. But those with access to Congress clearly did well in the package, according to the Globe's analysis of lobbying records, campaign contributions and the legislation.

On the Hill, legislation as complicated as the energy bill tends to be written more by staff, who then may turn to people outside government to help them with legal language, said a Republican senator who asked not to be named. The specialists tend to be lobbyists, citizen advocates say, creating a situation where lobbyists have a heightened influence on lawmaking.

Outside specialists, lobbyists or not, often have expertise that can be valuable. The trouble, some lobbyists and lawmakers say, is that the process tends to favor those who already have close connections to the White House, either by having held a previous job with the administration or attracting attention by raising money for the Bush-Cheney campaign.

Energy industry lobbyists say it's not a matter of payback, but simply a situation where environmentalists are running up against an elected majority that happens to be unsympathetic to their interests. Environmentalists, they say, should be more flexible and recognize they are dealing with an administration that wants to increase energy production.

"I think the environmental groups have marginalized themselves to the point where they don't get to have as much of an impact as they probably should," because they are so focused on attacking Bush, Maisano said. "They're not interested in policy. They're interested in getting the guy."

Environmental lobbyists, for their part, said they bump up against a lot of closed doors when they try to lobby on the Hill. When they do get in to see sympathetic lawmakers, their views end up being suppressed by a Republican majority that wants to see more exploration and development of oil, gas, and nuclear power.

"On the House side, it's positively Orwellian," said Marchant Wentworth, a lobbyist with the Union of Concerned Scientists. "Republican members have told me to my face that they're just not going to confront the chairman on an issue. I've never seen anything like it."

This report was prepared with the assistance of Marc Shechtman of the Globe library and freelance research manager Maud S. Beelman and researchers Kevin Baron and Samiya Edwards. ■