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ENERGY BILL BACKERS FEAR FALLOUT FROM SENATE 'NUCLEAR OPTION'

By Manu Raju

Senate Republicans and industry officials fear that their long-standing push to enact comprehensive energy legislation could be derailed by the pending decision by Senate Majority Leader Bill Frist (R-TN) to change the chamber's filibuster rules to approve President Bush's controversial judicial nominees.

Democrats have said this "nuclear option" will bring most official Senate business -- with the exception of matters critical to national defense and government operations -- to a halt.

The industry officials say this congressional session provides the best opportunity in years for passing comprehensive energy legislation that includes oil drilling in the Arctic National Wildlife Refuge (ANWR) and other provisions they favor.

But they are concerned that Democrats will block most Senate action if Frist pushes through a controversial rule change that would allow a simple majority of senators to overcome a filibuster on judicial nominees. Senate rules currently require 60 votes to overcome a filibuster.

Frist is seeking the rule change after Democrats blocked up-or-down votes on at least 10 nominees Bush has chosen for various appellate courts. Republicans are accusing Democrats of using an unconstitutional and unprecedented tactic of preventing an

up-or-down vote on judicial nominees. The Democrats counter that the filibuster is necessary to protect minority rights and argue that the push for a rule change is an example of an over-reaching Republican-led Congress.

Frist is under pressure from social conservatives to change the rules before the Supreme Court session ends in June, when it is widely expected that Chief Justice William Rehnquist will retire. But some industry officials are concerned that because the Senate is moving slower than the House in developing its energy bill, lawmakers will likely be unable to develop a final bill before the end of the Supreme Court's session.

While changing the rule requires 51 votes in the chamber where Republicans have 55 seats, it is unclear whether Frist will win enough support from his caucus. Already, three Republicans -- Sens. John McCain (AZ), Lincoln Chafee (RI) and Olympia Snowe (ME) -- have said publicly they would vote against the rule change. Several others, including John Warner (VA), Gordon Smith (OR), Susan Collins (ME), Arlen Specter (PA) and Chuck Hagel (NE), are still undecided, according to recent press reports.

Several industry officials say their hands are tied on the issue and are not urging Frist to reconsider a vote on the filibuster rule change. "Certainly,

people are getting a little anxious about it," one electric utility industry lobbyist says. "It's a dangerous game that could take down the energy bill."

Industry sources say that while they are not pressuring the lawmakers to speed up their work on the energy bill, concerns over the fallout of the nuclear option are making them eager to get the bill moving. "We would like to see the judges have a vote," a source with the National Association of Manufacturers says. "But we would really like to see an energy bill get passed."

Senate Majority Whip Mitch McConnell (R-KY) said in a recent floor speech that the energy bill could be a casualty of the fight over the judicial nominees. "Just because a majority of senators want to restore the 200-year-old norms and traditions of the Senate, by granting a president's judicial nominees who have majority support the simple courtesy of an up-or-down vote, my colleagues on the other side of the aisle are threatening to stop the Senate dead in its tracks," he said. "An energy bill to begin to address the high cost of gasoline and reduce our dependence on foreign oil? They would say: Forget it."

However, one Senate energy committee source says the development of a bipartisan energy bill between Chairman Pete Domenici (R-NM) and ranking member Jeff Bingaman (D-NM) is not being influenced by discussion of the nuclear option.

The House plans to approve the comprehensive energy bill this week, while Domenici and Bingaman are still finalizing a draft bill that will be marked up this spring. A draft of the comprehensive plan will be floated to committee staff next week and to the public in the second week of May, industry sources say, with a final floor vote possibly in May or early June.

Energy committee sources would not specify the schedule for considering the bill.

Moreover, Senate Minority Leader Harry Reid (D-NV) told reporters April 19 that while "things won't work the same around here" if the filibuster rule change succeeds, Democrats plan to continue working on "our own agenda, not theirs," including energy policy. "The Senate is not going to move along like it has," he said.

While environmentalists say publicly that they oppose the Senate rule change because they oppose the nominees, privately some say the nuclear option could be their way to kill the energy bill and drilling in ANWR, although no groups are publicly supporting the nuclear option. "I would be thrilled," one environmentalist says, if Senate business comes to a halt.

Meanwhile, the environmental group Earthjustice says it is planning to air radio ads with other activist groups in Maine and Oregon to target the two wavering senators from those states.

The ads will argue that approving the filibuster rule change will lead to confirmation of judges that could set back environmental protection efforts, one source with Earthjustice says.

The groups are particularly concerned about several of Bush's nominees, particularly William Myers -- a former mining and agriculture industry lobbyist and top lawyer in the Interior Department -- who has been nominated to the U.S. Court of Appeals for the 9th Circuit. Myers may be the first of the nominees considered by the full Senate, after the Senate Judiciary Committee approved his nomination by a 10-8 party-line vote last month.

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