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Congress Votes Not to Pursue Challenge to Multiple-Services Contracts

by LADB Staff
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The Chamber of Deputies handed President Vicente Fox a victory after it declined to pursue a constitutional challenge against the administration's multiple-services contracts (contratos de servicios multiples, CSM) program. The administration proposed the CSMs in 2002 as a means to bring private capital into exploration and extraction of natural gas, which would ease the financial burden of the state-run oil company PEMEX (see SourceMex, 2002-06-06 and 2003-02-09).

The Fox government already granted contracts under the program to several private companies in late 2003 and early 2004. These contracts involve exploration and extraction activities in the Burgos Basin in northeastern Mexico (see SourceMex, 2003-10-29 and 2004-01-28). PEMEX officials say the contracts will help the oil company double natural-gas production at the Burgos Basin to about 2 billion cubic feet. PEMEX's annual production of natural gas has been 4.5 billion cubic feet in recent years. The increase from Burgos will increase total annual production to almost 5.5 billion cubic feet.

PRI joins forces with PAN to defeat initiative

The proposal to challenge the CSMs before Mexico's highest court (Suprema Corte de Justicia de la Nación, SCJN) was defeated 229-113, largely because a majority of legislators from the former governing Partido Revolucionario Institucional (PRI) joined with colleagues from Fox's center-right Partido Acción Nacional (PAN) in opposing the measure. The proposal to bring the program before the SCJN was introduced by the center-left Partido de la Revolución Democrática (PRD) in mid-April after the plan was approved by the constitutional affairs committee (Comisión de Puntos Constitucionales) earlier in the month.

Many PRI legislators in the lower house who had expressed reservations about the CSMs in the end voted against the PRD resolution because of a technicality. They said the legislature could only bring constitutional challenges in cases involving agencies that are clearly part of the executive branch and not against semi-autonomous entities like PEMEX. "I have no doubt that the contracts have several elements that violate the Constitution," said Deputy Emilio Chuayffet, leader of the PRI delegation in the lower house. "At the same time, I am not convinced that we have a legitimate legal case to bring the matter before the courts."

The measure was brought before the full Chamber of Deputies even though the constitutional affairs committee in the lower house had already ruled in a narrow vote that the measure did not have the elements to merit a constitutional challenge. "This challenge cannot proceed in this case because we do not have a clear conflict between the executive and legislative branches," said PRI Deputy Federico Barbosa Gutierrez, a member of the committee. As an alternative, Barbosa proposed creating a special committee that would monitor the CSM program to ensure that it does not overstep constitutional boundaries.
PRD legislators, however, insist that legislators ought to look at the bottom line that the CSMs are violating the Mexican Constitution. "It is false that the Congress cannot put together a constitutional challenge on such contracts," said Deputy Pablo Gomez Alvarez, who heads the PRD delegation in the Chamber of Deputies.

The PRD and a faction of the PRI, led by Sen. Manuel Bartlett Diaz, pledged to continue opposing the contracts on the grounds that they threaten Mexico's energy sovereignty and therefore violate the Constitution. Bartlett is leading efforts in the Senate to eliminate the CSM program and is prepared to introduce a separate proposal to challenge the legality of the contracts. "This is the only way to halt the Fox administration's privatization process, which has been imposed on us in violation of the Constitution," said Bartlett. He said Fox has continued misguided policies followed by former Presidents Carlos Salinas de Gortari and Ernesto Zedillo, both members of the PRI.

Gomez said the CSMs also set a dangerous precedent because the model could be applied to other hydrocarbons. "[These contracts] could be expanded to include the heart of our petroleum industry, which is the extraction of crude oil," said Gomez.

The Fox administration had no immediate comment on the vote in the Chamber of Deputies. The president, however, expressed satisfaction after the constitutional affairs committee narrowly defeated the measure a week earlier. "Fortunately...the idea of a constitutional challenge was canceled," Fox said at that time. The Fox administration has used other means to express its position that the CSMs do not violate the Constitution because they do not give control of the resources to the party offering services. "The contractor cannot appropriate the reserves for its benefit and receives payment independent of results from exploration and exploitation activities," said a document released by PEMEX subsidiary Pemex-Refinacion in mid-April. (Sources: Milenio Diario, 04/05/04; El Sol de Mexico, 04/06/04; Spanish news service EFE, Unomasuno, 04/12/04; El Universal, Associated Press, 04/13/04; The Herald-Mexico City, 04/15/04; Notimex, 04/20/04; La Jornada, 04/02/04, 04/06/04, 04/07/04, 04/13/04, 04/19/04, 04/21/04; La Cronica de Hoy, 04/21/04)