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Supreme Court to Make Final Decision on 2005 Budget

by LADB Staff

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The Mexican Supreme Court (Suprema Corte de Justicia de la Nacion, SCJN) has had to take on the unwanted task of making the final decision on Mexico's budget for 2005. The matter landed in the high court after President Vicente Fox's administration and the opposition-led Chamber of Deputies could not agree on which branch of Congress should have the final word on expenditures and revenues.

The power struggle between Fox and Congress is partly a reflection of the new muscle that the legislative branch has gained since the demise of the de facto one-party system during the 71-year rule of the Partido Revolucionario Institucional (PRI). Fox brought the matter to the court after the Chamber of Deputies rejected Fox's "observations" to the changes proposed by the Congress to the version of the budget approved by the lower house on Nov. 17. The total of 1.818 trillion pesos (US\$162 billion) approved by Congress is 10% higher than the 1.74 trillion pesos (US\$155 billion) in expenditures contained in Fox's proposal.

Justices to hear arguments on presidential veto

A major issue in the dispute is whether President Fox has the constitutional right to recommend changes to the budget approved by the opposition-led Chamber of Deputies or whether the changes by the Congress to the budget sent to them by Fox should be final. Fox contends that, by rejecting the observations outright, the Congress is trampling on the rights of the executive branch to exercise veto power.

The Mexican Constitution does contain language giving the president the right to veto the budget but the power was rarely tested during the seven decades in which the PRI controlled the presidency and Congress. Two presidents have vetoed a budget in modern history: Venustiano Carranza in 1917 and Abelardo Rodriguez in 1933. The Congress justified its decision to boost expenditures by citing projections that the export price for Mexican crude oil would average US\$27 per barrel.

The Fox administration had used a more conservative forecast of US\$23 per barrel, leading to major conflicts with Congress when the revenues portion of the budget was under discussion (see SourceMex, 2004-11-10). In addition to increasing expenditures, the lower house reallocated 93 billion pesos (US\$8.3 billion), reducing expenditures for the Secretaria de Gobernacion (SEGOB), the Procuraduria General de la Republica (PGR), and other programs. The money was then channeled into education, agriculture, and a special fund for state governments.

Beyond the differences on expenditures, some analysts say the power struggle between the two branches of government has taken on strong political overtones. "This is a message to Fox that he is not in charge," said Jonathan Heath, chief economist in Mexico for Hongkong and Shanghai Banking Corporation (HSBC). "Mexico still has a system designed for one-party rule, but Congress

is trying to unwind that system and test the limits of its power. We're treading into unknown waters."

The power struggle, which Fox may be losing, may put the PRI in a strong position ahead of the 2006 presidential elections. "The PRI is coming back, winning state election after state election, and Mexico's first president elected in a free and fair race doesn't appear to be doing anything about it," said political analyst Denise Dresser of the Instituto Tecnológico Autónomo de México (ITAM). "Politics can't tolerate vacuums, and the PRI is filling the one created by Fox's failures."

Congress has warned that Fox may be placing the country in peril by tying up the budget-making process in the courts. "The redirection of two centavos of each peso is the reason [Fox] is challenging the Chamber's decision," said PRI floor leader Emilio Chuayffet. "But the consequences of this litigation will be great uncertainty for the nation." Mexico's Constitution stipulates that the budget for the next calendar year must be in place by Dec. 31, with an informal preliminary deadline set for Nov. 15.

Congress approved a constitutional change to move the preliminary deadline from Dec. 15 to ensure a speedier approval of the budget and reduce the chance of economic volatility (see SourceMex, 2004-04-28). However, the earlier deadline allowed the executive and legislative branches to become more entrenched in their positions, with Congress waiting until Dec. 14, the final day of the legislative session, to take a formal vote to reject Fox's "observations."

Fox brought his case to the Mexican public in a speech carried on Mexican television networks. "I have decided to legally challenge it, because my obligation is to defend you," Fox said, explaining why he was rejecting the budget passed by the Chamber of Deputies.

Decision could be difficult for high court

The conflict between the two branches has put the high court in a very tenuous position. Supreme Court Justice Juventino Castro y Castro said the judicial branch has been left in a no-win situation. Castro noted the version approved by Congress reduces expenditures for the courts by 5 billion pesos (US\$447 million) from the amount requested by the judicial branch. "If [the decision favors the executive branch], the courts will benefit," Castro told the official news agency Notimex. "If we rule in favor of the legislative branch, this is less favorable to the courts."

Fox's legal team considered exercising the veto without bringing the issue to the SCJN. But the matter would probably have ended up in the courts anyway because the Congress would have likely filed a legal challenge to the decision, said Fox administration spokesperson Agustin Gutierrez.

Some analysts say the intervention of the SCJN creates the opportunity for the courts to define the question of presidential veto. "The upside of this conflict is that the issue should get resolved," said Heath. The court, meanwhile, finds itself in the unenviable position of having to hand down a decision before Dec. 31 to ensure that the budget process complies with the Constitution. Some budget experts said, however, that the courts could decide to take whatever time they need to study the issue. In that case, the budget approved by Congress would go into effect, pending the SCJN decision. Herbert Bettinger, an associate with the accounting firm Mancera Ernst & Young, said the

delay in approving the budget has some implications for businesses, which do not know what tax changes will affect them. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on Dec. 15, reported at 11.17 pesos per US\$1.00] (Sources: Reuters, 11/17/04; Spanish news service EFE, 11/19/04, 11/29/04, Unomasuno, 11/15-18/04, 11/30/04; The Dallas Morning News, 12/03/04; Los Angeles Times, 11/21/04, 12/06/04; The Financial Times-London, 11/22/04, 11/30/04, 12/08/04; Associated Press, 11/08/04, 11/18/04, 11/19/04, 11/20/04, 12/14/04; Notimex, 11/09/04, 11/10/04, 11/12/04, 11/14/04, 11/15/04, 11/16/04, 11/18/04, 11/19/04, 11/28-30/04, 12/01/04, 12/05/04, 12/07-09/04, 12/12/04, 12/14/04; Agencia de noticias Proceso, 11/15-17/04, 11/29/04, 11/30/04, 12/07/04, 12/09/04, 12/13/04, 12/14/04; The Herald-Mexico City, 11/10/04, 11/15/04, 11/18-20/04, 11/23/04, 11/24/04, 11/26/04, 11/30/04, 12/01/04, 12/14/04, 12/15/04; La Jornada, 11/10/04, 11/12/04, 11/15-18/04, 11/22-26/04, 11/29/04, 11/30/04, 12/01-03/04, 12/06/04, 12/07/04, 12/14/04, 12/15/04; El Universal, 11/10-12/04, 11/15-18/04, 11/20/04, 11/22/04, 11/23/04, 11/25/04, 11/26/04, 11/29/04, 11/30/04, 12/01/04, 12/02/04, 12/06/04, 12/08-10/04, 12/14/04, 12/15/04; El Financiero, 11/10/04, 11/12/04, 11/16/04, 11/17/04, 11/18/04, 11/22-26/04, 11/29/04, 11/30/02, 12/01-03/04, 12/06/04, 12/08/04, 12/13-15/04; La Crisis, 11/11/04, 11/15/04, 11/18/04, 11/19/04, 11/26/04, 11/30/04, 12/01/04, 12/03/04, 12/10/04, 12/13-15/04; La Cronica de Hoy, 11/11/04, 11/12/04, 11/15-20/04, 11/22-25/04, 11/29/04, 11/30/04, 12/01/04, 12/02/04, 12/06-08/04, 12/13-15/04)

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