New Law Sets Specific Rules for Citizen Consultations

Carlos Navarro

Follow this and additional works at: https://digitalrepository.unm.edu/sourcemex

Recommended Citation

New Law Sets Specific Rules for Citizen Consultations

by Carlos Navarro
Category/Department: Mexico
Published: 2014-03-19

A new law is now in effect that could make it easier for the center-left opposition to organize a referendum allowing citizens to speak out against the energy reforms approved in late 2013 (SourceMex, Dec. 18, 2013). Opinions differ, however, on whether restrictions in the new Ley de Consulta Popular could prevent such a referendum.

The initiative, approved overwhelmingly in both chambers of Congress and signed into law by President Enrique Peña Nieto, puts into practical terms the political and electoral reforms that Congress approved in 2011 (SourceMex, May 4, 2011) and 2013 (SourceMex, Dec. 11, 2013). The reforms created several major changes in Mexico’s political structure, including independent candidacies and the right of citizens to call for referenda.

The legislation that the Chamber of Deputies and the Senate approved in March specifies rules that clarify how a referendum can take place, including three ways it can be initiated. A plebiscite can originate with the president, one-third of the members of either house of Congress, or 2% of registered voters. Any referendum proposed by the chief executive or the Congress would require majorities of both the Senate and lower house, while the Supreme Court (Suprema Corte de Justicia de la Nación, SCJN) would make the decision on citizen initiatives.

Strict conditions apply

The law specifies that any matter of "national importance" can be submitted for consultation, with a handful of notable exceptions. Any effort to restrict human rights spelled out in the Mexican Constitution cannot be the subject of a plebiscite. Also forbidden are initiatives that are already the responsibility of the executive or legislative branch, including any efforts to change Mexico’s form of government, alter the existing electoral system, or address matters of national security. Additionally, any matters dealing with the revenues and expenditures of the state or the structure of the armed forces are taboo.

While the right to call a referendum gives citizens the ability to propose changes, some analysts point out that the balance of power still favors the Congress, especially regarding the decision on whether a proposed issue is of national importance. "What constitutes a matter of national importance?" columnist Javier Aparicio asked in a piece posted in the Mexico City daily newspaper Excélsior. "It depends. If that question comes from the legislators, then they get to make that determination. If the citizens ask the question, then the Supreme Court decides whether the plebiscite can proceed."

Some analysts pointed out that the format established by Congress for a plebiscite also poses obstacles for the voters. "Regrettably, the law adds all types of obstacles to a measure codified in the Constitution," columnist Julio Boltvinik wrote in the Mexico City daily newspaper La Jornada. "It creates rigidity on dates, so that a referendum can only take place every three years.

Boltvinik says other flaws in the law include the vagueness of the text that addressed the themes that would be excluded from a plebiscite and the obligation that the SCJN must rule on whether
a specific topic complies with the Constitution. "Nevertheless, the final text is not as bad as I had feared because the Senate removed some of the worst stipulations that the Chamber of Deputies had approved in its initial version," said Boltvinik.

Among other things, the law stipulates that a plebiscite cannot be binding unless 40% of registered voters participate, which could become an obstacle. Based on the latest voter rolls, that would mean that 30 million Mexican citizens would have to cast a ballot. "This requirement might not be difficult to attain as long as the consultations are held on the same day as federal elections," said Aparicio.

**PRD seeks referendum on energy reform**

As expected, the Congress offered strong support for the measure. "The new law on popular referendums strengthens our democracy and allows citizen intervention to implement their opinion, by way of law," said Deputy Abel Octavio Salgado, a member of the governing Partido Revolucionario Institucional (PRI).

Deputy Silvano Aureoles, floor leader of the center-left Partido de la Revolución Democrática (PRD), described the approval of the new law as a victory for the left, despite criticisms that the measure is too restrictive. "The principle of popular consultation is the banner for the PRD, as is referendum, plebiscite, and the revocation of a mandate," said Aureoles. "We could not oppose a law, while not perfect, that represents an important advance in an area that we consider fundamental."

Critics included representatives of other center-left parties. "[This law] has so many limitations that it will be difficult for us to use it to advance a bill based on popular initiative," said Deputy Francisco Alfonso Durazo Montaño, a member of the Movimiento Ciudadano (MC) party.

Regardless of the differences in the left, many legislators see the new law as an opportunity to bring the energy reforms that Congress approved last year to a public consultation. However, the interpretation of the law has resulted in differences of opinion on this matter. Legislators from the PRI, the center-right Partido Acción Nacional (PAN), and their allies—the Partido Nueva Alianza (PANAL) and the Partido Verde Ecologista de México (PVEM)—believe that the restrictions in the new law on what topics could be brought to a citizen vote would preclude a referendum. The state-run oil company has traditionally been a source of revenue for the Mexican Treasury, and the new law prohibits bringing matters dealing with income and expenditures to the voters.

Conversely, the PRD believes that popular opinion on the energy reforms, which allow greater private participation in energy production, should be submitted to the public for approval. Public-opinion polls conducted before the vote in Congress last year reflected mixed opinions on the energy reform, but many indicated a strong public sentiment against opening Mexico’s energy sector to private parties, particularly foreign interests (SourceMex, Oct. 16, 2013).

"Even though many PAN and PRI legislators intend to prevent any consultation on the energy sector, I believe that we have no alternative but to hold a plebiscite," said Sen. Luis Sánchez, floor leader for the PRD in the Senate, in reference to Article 35 in the Constitution—which stipulates the right of citizens to have a voice in matters of national importance.

"It is going to be very difficult for the Supreme Court to rule that an important area like energy is not of national importance," added Sánchez, indicating that a referendum could take place as early as September.
Former presidential candidate Cuauhtémoc Cárdenas, who led the opposition to the energy reforms, suggested a different strategy. "While Congress has approved the overall energy reform, the Chamber of Deputies and the Senate must still pass secondary laws—legislation that would enable the changes to be implemented," said Cárdenas, whose father, former President Lázaro Cárdenas (1934-1940), nationalized Mexico’s oil industry in 1938.

"We are waiting for the secondary laws to be presented, and we will push for public consultation on any initiative that deals with matters of national importance, based on the new law," said Cárdenas.

-- End --