Why Mexico’s Legal Reforms Are Not Enough

Stephen Zamora

The Center for U.S. and Mexican Law

If they held a legislative Olympics, the Mexican Congress would surely win the gold medal. In recent years, the Mexican Congress has passed more major law reforms and more constitutional amendments than most countries will see in a generation. Legal reform has become so habitual that the Mexican government even has a website and Twitter account devoted to the topic (see http://reformas.gob.mx/). The crescendo for legal reform began more than 20 years ago, when the government began to open the Mexican economy to foreign trade and investment. Over the past two decades, the politics and the economy of Mexico have been transformed, and with the help of NAFTA, the Canadian, Mexican and U.S. economies have become increasingly integrated.

Only one major sector of the Mexican economy has remained stubbornly immune from the competition and foreign investment that Mexico needed to insure healthy economic growth – the energy sector. But on December 18, 2013, Congress amended the Mexican Constitution to remove this last bastion of governmental control by eliminating the government’s monopoly over the country’s immense oil and gas and electricity sectors. Once the reforms are fully implemented, Pemex and CFE, the government-owned oil and electricity companies, will for the first time face foreign competition, and will (in theory) operate as if they were commercial enterprises, instead of the political organs they have always been.

Once the reforms are fully implemented, Pemex and CFE, the government-owned oil and electricity companies, will for the first time face foreign competition, and will (in theory) operate as if they were commercial enterprises, instead of the political organs they have always been.

Or is it? Legal reform is often a prerequisite to healthy economic change, but adopting new laws will not insure productive change unless the Mexican government is prepared to administer the laws efficiently. Mexico’s new energy laws pose a formidable challenge to the government regulators who will administer them and to the private sector players who will operate in a completely new legal and economic environment. Energy law in the competitive world that Mexico now enters is arcane and byzantine, both in its handling of property and contractual rights as well as in governmental regulation. Until now, Pemex has operated in strict adherence to Mexico’s authoritarian political system, and not as a commercial enterprise. Over time, the disadvantages of a state-owned oil monopoly became exposed. The federal government depended on oil revenues to balance its budget, and in the process, it deprived Pemex of the money and modern industrial practices it needed to modernize and become efficient. Mexico’s state-owned electricity market also suffered from decisions made by political whims rather than economic realities. (Electricity theft, unknown in most industrialized countries, is a major weakness in the market.) Pemex and CFE, burdened by politics, had failed to meet the energy needs of an open economy that could compete internationally.

In the first four months of 2014, the Mexican Congress adopted a slate of 21 laws implementing the energy reforms; a new era of Mexican energy development is set to begin. Legal reform is often a prerequisite to healthy economic change, but adopting new laws will not insure productive change unless the Mexican government

Stephen Zamora is Leonard B. Rosenberg Professor of Law and Director of the Center for U.S. and Mexican Law at the University of Houston Law Center.

Please email the interviewee at szamora@uh.edu with questions about this article.
can run it however you want? In 2008, seeing the error of treating Pemex as a political tool, Congress finally created a federal agency, the National Hydrocarbons Commission (CNH, from its Spanish acronym), to regulate upstream oil and gas operations in Mexico. Under the new laws, in addition to regulating Pemex’s upstream operations, CNH will play a key role in the energy opening by administering the process for receiving bids and approving contracts with domestic and foreign companies. Unfortunately, the staff of CNH is miniscule: with a professional staff of 120 employees, CNH is a mouse trying to regulate an elephant – Pemex, with more than 150,000 employees, not to mention the hundreds of private companies that CNH will oversee. The new laws will also create a new environmental agency – the National Agency for Industrial Security and Environmental Protection of the Hydrocarbon Sector (ANSIPA, the Spanish acronym) – to insure that environmental protection and worker safety will accompany the expanding energy sector, and two new agencies to oversee the distribution of gas and electricity.

In the rush to open its doors to foreign investment, the Mexican Congress has not yet appropriated the funds needed to hire and train the professional staff needed to regulate such a sophisticated and volatile industry as energy. A competitive market in a strategic sector like energy requires efficient regulation, and efficiency has not been a hallmark of Mexican economic regulation. For example, in 1988, Mexico adopted its first comprehensive environmental law, considered by many at that time to be a state-of-the-art piece of draftsmanship. But effective environmental management depends on enforcement of such laws, and the Mexican Congress has never appropriated sufficient funds to enforce the environmental laws so as to achieve the goals of environmental sustainability that the law tries to insure.

As luck would have it, a wealth of expertise is readily available to Mexican agencies in Houston. Once considered an “oil town,” Houston is now a world energy capital, reflecting the global and diversified nature of the energy industry in the 21st century. More than 3,700 energy-related companies are based in Houston, including 40 of the 134 publicly traded oil companies in the United States. Houston is also a gateway and communications center for Mexicans entering the United States, as well as for Americans and foreign companies wishing to do business in Mexico. Houston’s international law firms, energy consulting firms, and energy companies are vying to market their expertise in energy contracting and energy regulation to Mexico’s public agencies and private firms that will have to navigate the new, competitive environment in Mexico. They will not, however, sell their know-how cheaply.

Fortunately, the University of Houston offers a reasonable, experienced, and objectively balanced alternative for providing cost-effective training to Mexican lawyers, engineers, and other professionals. For three decades, the University of Houston Law Center has attracted foreign lawyers to study energy and environmental law in our highly regarded Master of Laws program or in specialized training programs for energy professionals from China, Brazil, Angola, Mexico, and elsewhere. Each semester, we offer a wide range of the very courses that Mexican regulators should be studying. Beginning in the late 1980s, each year Pemex lawyers have enrolled in the Master of Laws program at the University of Houston Law Center, learning energy law under a joint scholarship program funded by the Law Center and Pemex. In an exciting new venture, the UH Law Center has recently joined with ITAM University in Mexico City to offer high-level training courses in energy law, economics, and regulation to public and private sector professionals in Mexico.

The University of Houston and other academic institutions in Texas can provide cost-effective, impartial educational services to help the transition to a competitive energy sector, but the Mexican government must move quickly to appropriate the funds needed to train competent energy regulators. Without efficient regulation, Mexican energy reform could turn out to be a fracaso costoso – a costly failure.