

MIJARES ANGOITIA
CORTES Y FUENTES

Bills to amend
the Mexican Constitution

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INTRODUCTION



President of Mexico introduces package of bills to amend the Federal Constitution

On February 6, 2024, the Mexican President introduced to the House of Representatives a package of 20 bills to amend the Mexican Constitution in matters of recognition of indigenous peoples and communities, labor funds, youth, health, housing, animal protection, environment, salaries and labor welfare, railroad services, electoral system, judiciary, national guard, administrative restructuring, independent agencies, austerity, criminal law, tax, and strategic industries and electricity market.

Except for the bill in matters of administrative restructuring which is of a legal nature and requires a simple majority, to approve the bills, a favorable vote of at least two-thirds of the Mexican Congress' members in attendance is required, i.e., of the House of Representatives and the Senate, as well as approval of a simple majority of the State congresses.

The approval of these amendments has become one of the central topics of the campaigns for the Federal elections that will take place on June 2, 2024. While Morena, the incumbent party, and its allies appeal to the electorate to grant them the qualified majority needed to approve these amendments, the opposition has expressed its support for some and its rejection of most of these bills.

Following is a summary of the main aspects of each initiative.





BILLS IN HEALTH MATTERS

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This bill seeks to amend Article 4 of the Constitution to incorporate the right to free and universal access to medical care provided by the Mexican State, so that all individuals may exercise their human right to health, regardless of whether they have or not any social security.

The explanatory statement to the bill emphasizes that the State must adopt legislative and other measures (without specifying which ones) to ensure that private companies comply with health regulations, control the commercialization of medical equipment and medicines by private agents, and ensure that privatization does not threaten the availability and accessibility of health services. In this sense, this bill focuses on returning to a scheme where the health system is centralized and in charge of the State.

Also, a bill was introduced seeking to prohibit the production, distribution, and sale of electronic cigarettes and vaping devices, as well as of toxic substances, chemical precursors, and synthetic drugs, such as fentanyl. If enacted, it would prohibit any activity in the national industry and in foreign trade that has the purpose of carrying out the aforementioned activities.

It should be noted that this bill seeks to overrule the Supreme Court's declaration of unconstitutionality in relation to the commercialization of electronic devices that strictly work with tobacco, which has allowed their importat and commercialization in Mexico to date.



BILL IN ENVIRONMENTAL MATTERS AND ANIMAL PROTECTION

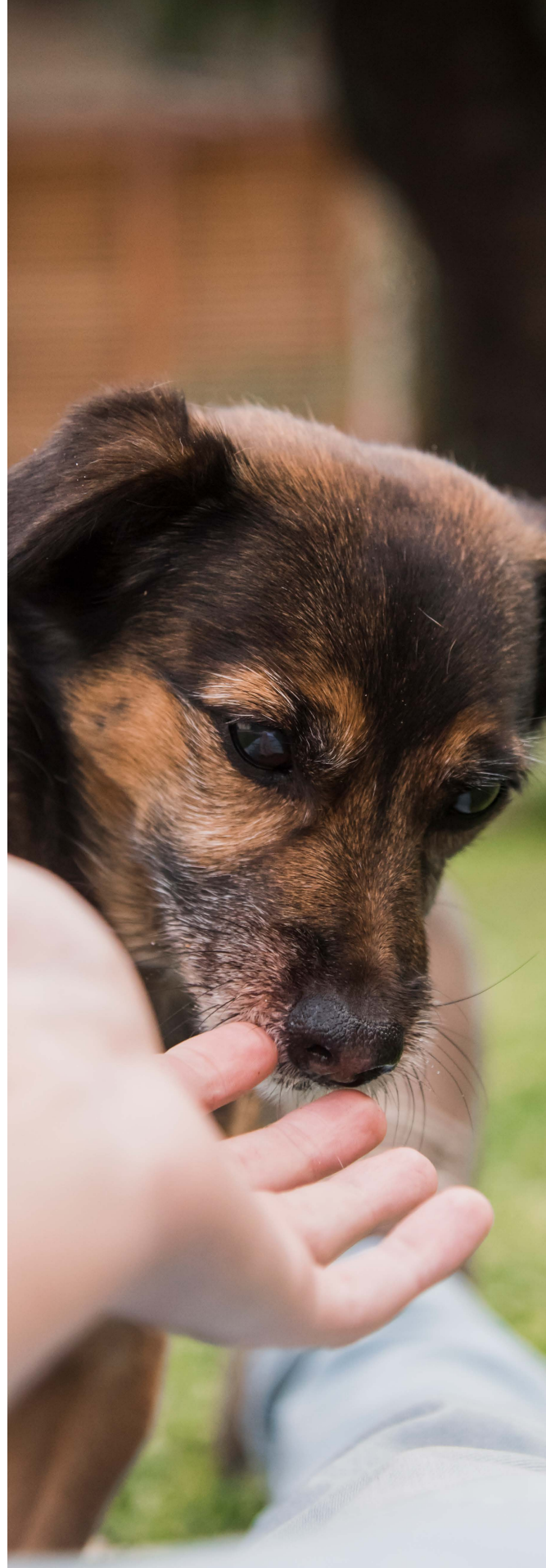
This bill recognizes corn as a staple food and an element of national identity, establishing that Mexico must declare itself free of genetically modified corn crops. The bill also proposes to guarantee access to water for personal consumption and establish that, for areas with low water availability, no water concessions will be granted, but only allocations for personal and domestic consumption.

The bill also seeks to prohibit the granting of licenses for the exploration and production of minerals, metals, or metalloids in open air. It would also prohibit the granting of contracts or licenses for the extraction of hydrocarbons in unconventional oil fields through fracking, establishing sanctions for those who violate this prohibition.

However, contracts, concessions, permits, and authorizations granted prior to the entry into force of the bill would be upheld.

In addition, another bill seeks to incorporate within the investigation plans and programs, the protection and care of animals; the prohibition of animal abuse, guaranteeing adequate treatment, and the conservation and care of animals. It also seeks the enactment of the General Law for the Protection and Care of Animals, the purpose of which would be the prevention and prohibition of abuse in the breeding and use of animals for human consumption, as well as the establishment of the necessary measures to control plagues and sanitary risks.

The bill compels the States to issue their own laws on animal abuse. To date, Southern State Chiapas is the only one that does not have an animal welfare law, and, with the enactment of the bill, it would be required to issue such legislation.





BILL IN CRIMINAL MATTERS

This bill proposes the incorporation of different tax crimes into the catalog of crimes that merit unofficial pre-trial detention as a cautionary measure, i.e., those in which the power of the Control Judge to determine whether a person is granted a measure restricting its liberty during the criminal proceeding, through the amendment to Article 19 of the Constitution. In particular, it is proposed to add to the catalog the crimes of tax fraud, smuggling, issuance, sale, purchase or acquisition of tax receipts, including invoices, that cover non-existent or false operations or simulated legal acts.

The aforementioned initiative is questionable given that the Inter-American Court of Human Rights has ruled in the Garcia Rodriguez et al. v. Mexico case that the official pre-trial detention is contrary to the human rights set forth in the Inter-American Convention on Human Rights and has even ordered the Mexican State to adapt its legislation in this matter to such international treaty.

Additionally, this reform is against the principle of presumption of innocence, which is constitutionally the cornerstone of the new criminal system.

Likewise, it seeks to overcome the declaration of the Supreme Court that declared as unconstitutional, informal pretrial detention for tax fraud, smuggling, issuance, alienation, purchase or acquisition of tax receipts, including invoices, that cover non-existent or false operations or simulated legal acts.



BILL IN MATTERS OF INDEPENDENT AGENCIES



The bill intends to eliminate, among others, the independent agencies in charge of protecting economic competition (i.e., the Federal Economic Competition Commission (COFECE) and the Federal Institute of Telecommunications (IFT) and the independent agencies that govern and regulate the energy and hydrocarbons industries (i.e., the Energy Regulatory Commission (CRE) and the National Hydrocarbons' Commission (CNH)), as well as the National Institute for Information Access (INAI), the National Council for the Evaluation of Social Development Policy (CONEVAL), and the National Commission for the Continuous Improvement of Education (Mejoredu), and to transfer their powers and duties to the centralized federal government, without having autonomous bodies to regulate economic competition, the energy and hydrocarbon sectors, and access to information.

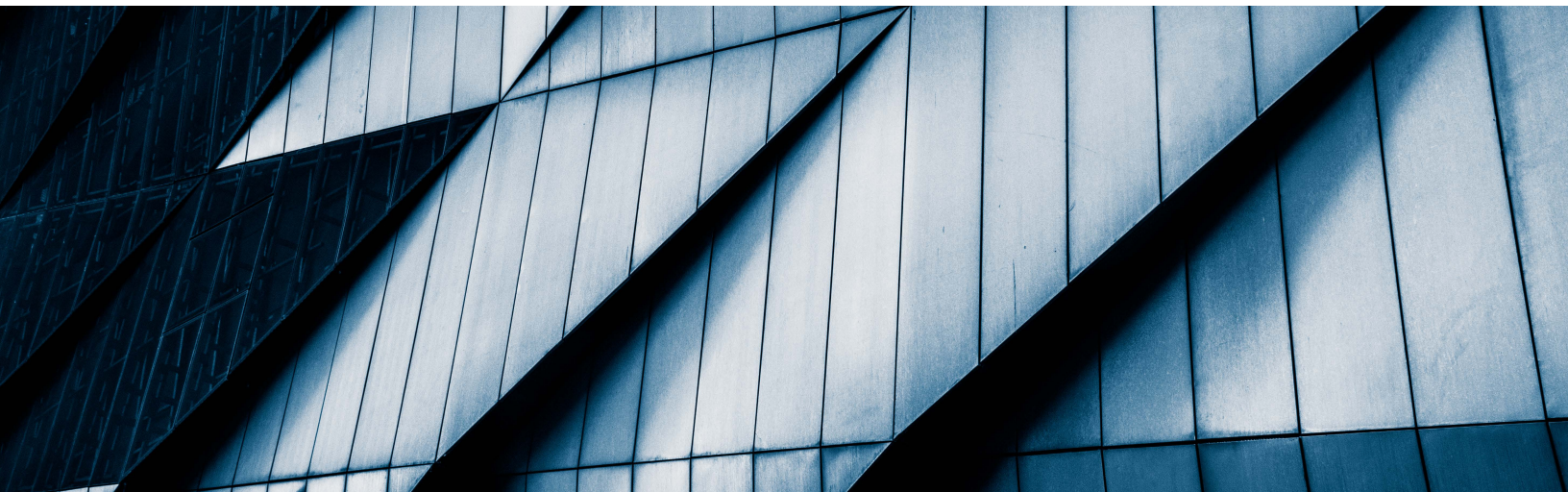
In case COFECE is dissolved and its powers and duties were transferred to the Ministry of Economy, which could imply violations to Chapter 21 of the Treaty between Mexico, the United States, and Canada (USMCA) since there is an express obligation for each party to the USCMA to maintain a national competition authority or authorities responsible for the enforcement of its national competition laws. Additionally, it would be difficult to comply with the commitments assumed by Mexico to ensure the effective enforcement of the Federal Economic Competition Law, maintaining procedural fairness in the administrative procedures provided therein, as well as the cooperation and coordination between the national competition authorities of the countries party of the USMCA.

With respect to the CRE and CNH, both coordinated regulatory bodies in energy matters were created through the 2013 energy reform. If the bill is approved, the powers of these bodies would be transferred to the Ministry of Energy. Furthermore, if the CRE and the



CNH were eliminated, Mexico would be deprived of independent bodies with technical capabilities and expertise in energy matters. The lack of such bodies could facilitate the capture of the regulatory function over the energy sector (including the granting of permits) by political actors, which would be detrimental to the development of the energy sector and the energy and hydrocarbons markets.

INAI is the autonomous constitutional entity that guarantees compliance with two fundamental rights: the right to access public information and the right to personal data protection. In case INAI's autonomy were to be eliminated, the principle of independence would be violated, which could affect Mexico's fulfillment of its obligations nationally and internationally.





BILL IN ADMINISTRATIVE SIMPLIFICATION MATTERS

This initiative proposes the merger, integration or extinction of 16 parastatal agencies and administrative units, and the transfer of their functions to various Ministries.

Among others, it seeks to merge the Taxpayer Defense Attorney's Office (PRODECON) and the National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF) into the Ministry of Finance and Public Credit.

PRODECON is a decentralized, non-sectorized public agency, with its own legal standing and assets, with technical, functional and managerial autonomy, whose objective is to defend the rights of taxpayers before tax authorities.

In this sense, such merger is questionable since the new agency proposed to be created would not have the same autonomy as the current PRODECON. For example, it eliminates the statement that PRODECON's budget can never be less than that approved in previous fiscal years and eliminates fundamental requirements to be the head of this agency, such as not having been an official of the Tax Administration Service for the three previous fiscal years.

It is important to point out that this legal amendment only requires a simple majority and not a qualified majority, since it is an amendment to implementing legislation and not to the Mexican Constitution.

BILL IN MATTERS OF THE JUDICIARY



The bill it proposes structural changes such as the reduction in the numbers of Justices of the Supreme Court; voting elections of all available vacancies in the Judiciary; the elimination of the Chambers of the Supreme Court; the creation of a Court of Judicial Discipline; and the modification of the rules regarding injunctions against legal provisions; among others, as described above:

- (i) It is proposed that District Judges, Circuit Courts and the Supreme Court of Justice solve all the proceedings in a maximum term of six months, and in case this term is exceeded, that notice is given to the Judicial Discipline Court in order to justify the reasons for the delay, where the referred court may impose different types of penalties.
- (ii) It is proposed to create the Judicial Discipline Court, a body with technical and managerial independence, belonging to the Federal Judiciary, which will resolve any act or omission contrary to the law, to the public interest, or to the proper administration of justice by the public officials of the Federal Judiciary.

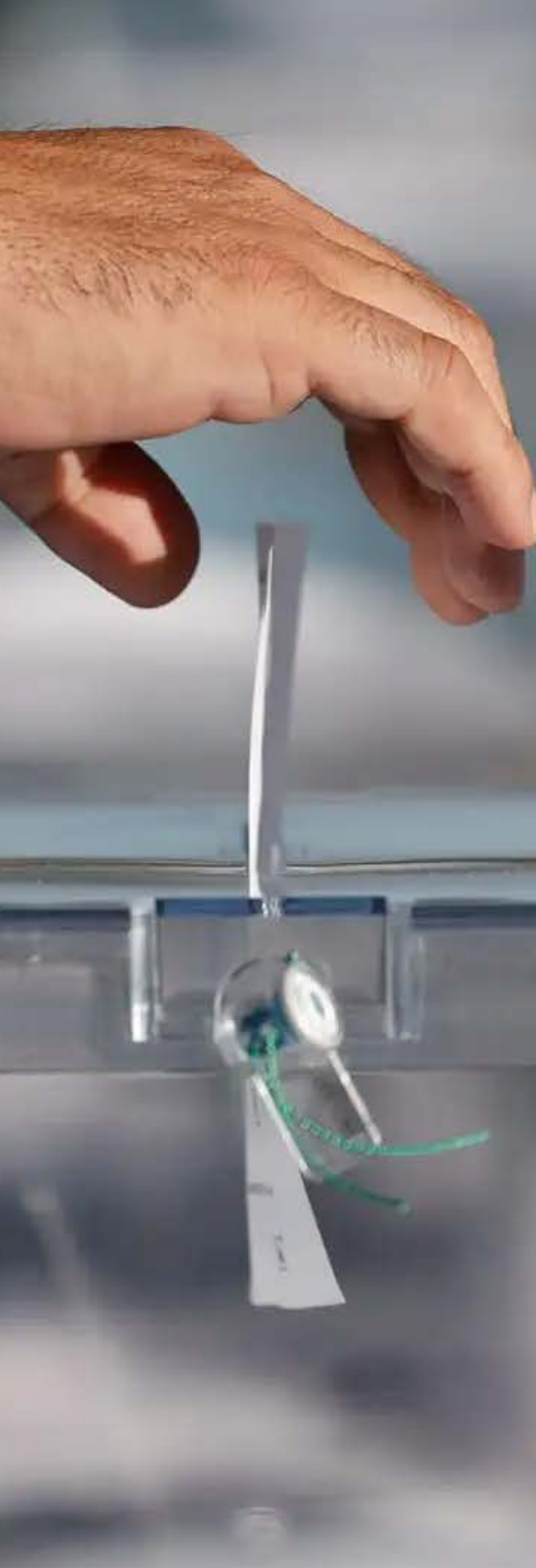
The Judicial Discipline Court would be composed by five members elected by the citizens at the national level and would operate on a Plenary.

The referred court may impose penalties such as warnings, suspension, economic fines, and dismissal and disqualification of public officers, except for the Supreme Court Justices. The decisions of the Court of Judicial Discipline would be final, this means, no trial or appeal would proceed against them.



- (iii)** The number of Justices of the Supreme Court is reduced from 11 to nine and their term of office is reduced from 15 to 12 years, without the possibility of being elected for another period unless they have held the office on a provisional basis.
- (iv)** The chambers that conform the Supreme Court are eliminated, and the majority of the votes is reduced from eight to six, with the exception of the votes necessary to invalidate norms due to unconstitutionality, either through an amparo lawsuit or actions of unconstitutionality, which remain at eight votes.
- (v)** Voting election for the Justices of the Supreme Court, Magistrates and District Judges. In the case of Ministers of the Supreme Court, candidates will be nominated as follows:
 - The Executive Branch, through the President, shall nominate up to 10 candidates;
 - The Legislative Branch will nominate up to 10 candidates, which shall be divided into five candidates proposed by the Senate and five by the House of Representatives;
 - The Judicial Branch shall nominate up to 10 candidates.
- (vi)** The salary received by the Justices of the Supreme Court, Magistrates of the Judicial Discipline Court; and other employees of the Federal Judiciary may not exceed the salary of the President of the Republic.
- (vii)** It is established that the admission to process of constitutional challenges or unconstitutionality actions regarding general norms will not suspend the application of the norm in question. For amparo lawsuits in which the unconstitutionality of a general rule is claimed, the injunction or the ruling issued may not have general effects.





BILL IN ELECTORAL MATTERS

The purpose of this bill is, among others, to reduce public spending on the electoral system, to standardize the electoral processes of the States, to reduce the percentage of participation required for popular consultation and revocation of mandate to be binding, as well as to reduce the number of representatives in the Senate and the House of Representatives, as described above:

- (i) The bill seeks to reduce by half the public financing to political parties for campaign expenses during the electoral period.

With respect to financing through private resources, whether for the support of ordinary activities or to pay for campaign expenses during electoral processes, precise rules are established, ordering political parties to identify and report the source of all resources obtained, without exceeding the limits established by law.

The resources provided will not be tax deductible. Likewise, it is prohibited that the same individual donates in a year to more than one party or independent candidate and that resources obtained are applied to cover previous electoral processes.

- (ii) It implements a new model of political communication that focuses on the access of independent candidates and political parties to radio and television, through the State's airtime. The aim is to channel the effective broadcasting of party messages. Messages shall not last less than one minute.

From the beginning of the pre-campaigns and until the Election Day, 48 minutes per day will be allocated in each radio station and television channel to political parties, independent candidates and the National Institute of Elections and Consultations. Those minutes will be distributed in two and three minutes for each hour of transmission.

The time allocated to political parties, independent candidacies and other popular vote positions will be distributed in accordance with established criteria.

- (iii)** It proposes the disappearance of the National Electoral Institute (INE) and the creation in its place of the National Institute of Elections and Consultations (INEC) as an independent electoral authority, which would be the only electoral authority in the country, supervising and organizing all electoral processes in Mexico, including in States and Municipalities, and therefore local electoral bodies would disappear.

Likewise, it is proposed to strengthen the Electoral Court, which will be in charge of absorbing and resolving electoral controversies and conflicts in the country, as it seeks to eliminate local electoral courts.

It is being proposed that the House of Representatives and the Senate, the President and the Supreme Court, each present ten candidates to the House of Representatives so that by means of a free and secret vote, the heads of INEC and the Electoral Court may be elected.

For the integration of the INEC, seven council persons will be elected and the person who has obtained the highest number of votes will preside over the body. Regarding the Electoral Court, seven magistrates will also be elected; the presidency will be defined by election of its members and will be held for a period of four years.

- (iv)** At the moment, the House of Representatives is composed of 500 representatives, 300 are elected by relative majority, that is to say, by the vote in the 300 electoral districts of the country; and the other 200 representatives are elected by a proportional representation system, known as plurinominal. Plurinomial representatives are elected according to the proportion of the election results, and the allocation of the number of representatives to be appointed is made on the basis of the percentage of votes obtained by a political party in a given area of the country.

Under the bill, the House of Representatives would be reduced to 300 representatives, and the 200 plurinominal seats would be eliminated.

- (v)** The bill proposes to establish a criterion for the definition of the number of representatives in the local congresses, as well as in the city councils and mayoralties of Mexico City.

The number of representatives in the state legislatures may not exceed 15 in those States which population is less than one million people, and for each additional 500,000 inhabitants, it may be increased by one representative for up to a maximum of 45.

In relation to the Municipalities of the States and the territorial districts of Mexico City, the same population criterion must prevail in the composition of the city councils and mayoralties.

- (vi)** It is added as a prohibition to carry out popular consultations in tax matters, including basis, rates and tariffs and in security matters such as those matters related to the National Guard.
- (vii)** The duration of the campaigns for senators, house representatives and governors is extended to 75 days. For the election of councilors, magistrates and ministers, the duration of the campaign will be 45 days.
- (viii)** It is proposed to take advantage of technology to facilitate and encourage citizen participation through electronic voting.
- (ix)** Regarding the popular consultation and mandate revocation, the aim is to reduce the binding participation to 10%, that is, if 30% of the citizens registered in the voter's nominal list participate, this will be binding and its results will bind the executive and legislative branches and other authorities.



BILL IN MATTERS OF THE STATE'S STRATEGIC INDUSTRIES AND THE ELECTRICITY MARKET

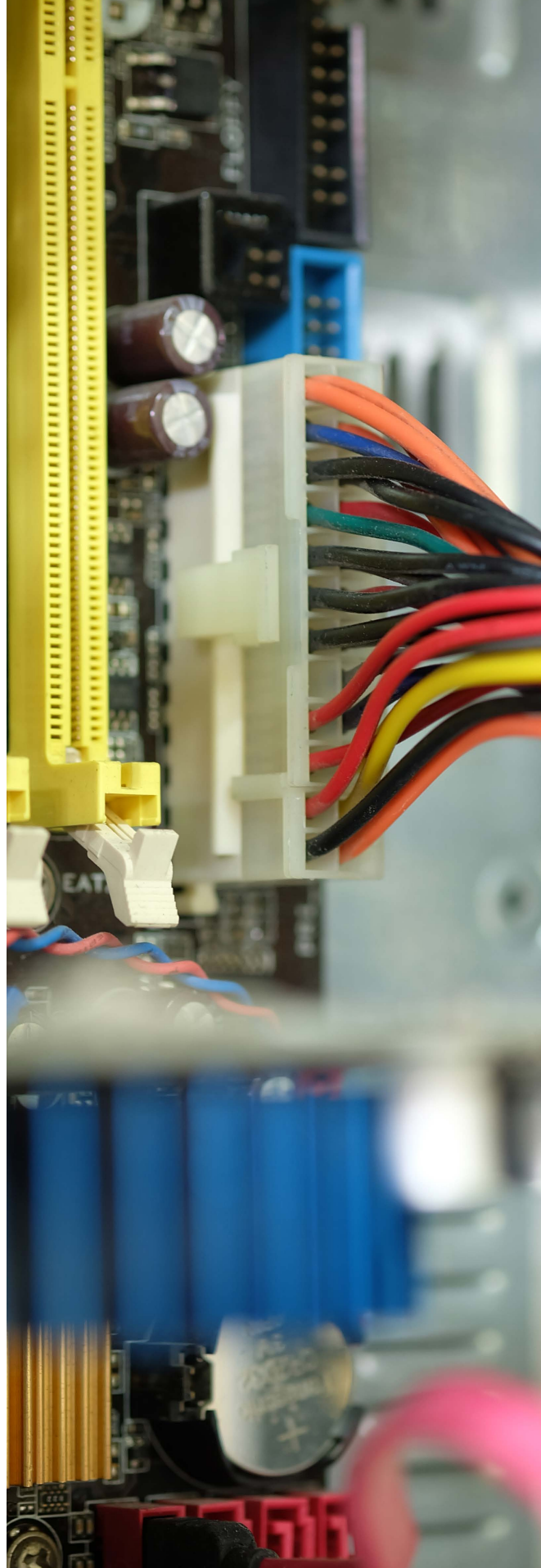
The bill intends to replace the State-owned enterprises with "State public companies". The essence of State public companies will be to fulfill their social responsibility and guarantee the continuity and accessibility of the public electricity service. It also eliminates the concept of "best practices" as a point of reference in setting the standards for the administration, organization, and operation of such enterprises.

The bill also proposes to give priority to these public companies over the private sector and eliminate the possibility for the State to enter into contracts with private parties in relation to the planning and control of the National Grid. It is established that the planning and control of the National Grid by the State will have the objective of preserving the security and energy self-sufficiency of Mexico and providing the people with electricity at the lowest possible price to guarantee national security and sovereignty through the State's public companies.

In addition, the bill proposes to establish that the internet service provided by the State will not be considered a monopoly.

In our opinion, the intended modifications would involve the following:

1. State-owned enterprises would no longer be governed by corporate governance rules similar to those of a private company.
2. With the new objectives regarding the planning and control of the National Grid by the State, the State could have more discretion in controlling access by private parties.



3. Statutes could be amended to preclude the State from entering into contracts with private companies.
4. In participating in the electricity industry, State public companies would have priority over private companies, including possibly in the electricity dispatch.
5. The State may offer the internet service unrestrained from antitrust limitations.





BILL IN MATTERS OF RAILROAD SERVICES

The bill's main objective is to recover the relevance of passenger railroad transportation service.

This bill is introduced as a follow-up to the decree published in the Official Gazette of the Federation on November 20, 2023, by virtue of which the provision of public passenger railroad transportation service is declared a priority area for national development.

To this end, the bill proposes the following amendments to article 28 of the Constitution:

- (i) Incorporate the specific mention of passenger and freight railway transportation as part of the priority areas for national development.

In this regard, it is important to note that the current text of said article already identifies railways within such priority activities; therefore, the proposal solely seeks to add a specific reference to both types of transportation.

- (ii) It is established that the Mexican Government retakes the right to use railways to provide passenger transportation services, and that the Executive Branch may grant licenses to public entities or to private companies.

It is important to consider that the current licenses regime already provides that the Federal Government may grant additional licenses for the provision of passenger transportation services in the railways. Likewise, "titles of assignment" are also provided for in the current law and serve as a form of license granted to governmental entities or States so that they may participate in the provision of railway transportation services.

- (iii) It indicates that individuals who have licenses to provide railway freight transportation services may obtain licenses to provide railway passenger transportation services, which shall be given preference in terms of what is established in the applicable laws.

BILL IN MATTERS OF INDIGENOUS PEOPLES AND COMMUNITIES



The Bill seeks to recognize indigenous and Afro-Mexican peoples and communities as subjects of public law (they are currently recognized as subjects of public interest) and therefore with legal personality and their own estate, placing them in a better legal situation and fully recognizing their rights.

In this sense, the Bill intends to promote the integration of indigenous peoples and communities, in particular, by establishing their rights, among others, to be consulted on administrative or legislative measures that significantly impact their lives or environment, to receive the benefits when private parties obtain any profit from administrative acts issued in their favor, to a life free of all types of exclusion, discrimination and violence (especially sexual and gender violence), and to the respect, development and establishment of their internal normative systems.

The bill seeks to amend Article 2 of the Constitution in the following aspects:

- (i) The recognition of their normative systems and cultural specificities is strengthened. Regarding access to justice, jurisdictional institutions are obliged to guarantee the right of indigenous peoples to be assisted and advised by interpreters, translators, advocates and experts specialized in indigenous rights, legal pluralism, gender perspective, and cultural and linguistic diversity.
- (ii) The right to free, prior, informed, culturally appropriate and bona fide consultation is incorporated when it is intended to adopt legislative and administrative measures that may cause significant effects or impacts on their lives or environment, in order to obtain their consent or reach agreements.



- (iii)** The obligation that, when a private individual benefits from any administrative measure subject to consultation, the cost must be covered by the private individual, is added. Likewise, when a profit is obtained from these measures, a fair and equitable benefit must be granted to the indigenous communities.
- (iv)** It guarantees the use of their languages and other cultural elements in the media, telecommunications and new information technologies in their peoples and communities and recognizes the right to use indigenous languages in the construction of educational models.
- (v)** It guarantees and extends the communications network that allows the articulation of towns and communities through the construction and expansion of communication routes, artisanal roads, radio broadcasting, telecommunications and broadband internet.
- (vi)** It seeks to guarantee recognition and special attention to the rights of indigenous and Afro-Mexican children, youth and young people, through policies, programs and resources that ensure their full exercise, a life free of all types of exclusion, discrimination and violence, especially sexual and gender-based violence, as well as the creation of policies aimed at preventing and addressing addictions.
- (vii)** The rights of Afro-Mexican peoples and communities are recognized as subjects of public law.

If approved, within 180 days, the following is required:

- (i)** That Congress issues a general law on the matter and harmonizes the legal framework of the corresponding laws.
- (ii)** That the Executive Branch carries out amendments to the applicable administrative provisions to ensure respect for and implementation of the rights of indigenous and Afro-Mexican peoples and communities.
- (iii)** That the authorities of the three levels of government make the regulatory adjustments that ensure the characteristics of self-determination and autonomy of indigenous and Afro-Mexican peoples and communities, as well as their recognition as subjects of public law.





BILL IN MATTERS OF EMPLOYMENT AND SOCIAL SECURITY

The bill proposes to establish as the main criterion for annual increases in minimum wages that they should not be lower than inflationary levels. This measure seeks to ensure that employees can maintain their purchasing power and adequately meet their basic family needs. In addition, this bill includes new provisions establishing that the salaries of full-time elementary school teachers, police officers, members of the National Guard, members of the permanent Armed Forces, as well as doctors and nurses in the public sector, may not be lower than the general average registered with the Mexican Social Security Institute (IMSS).

In 2019, the Ministry of Labor and Social Welfare implemented the “Youth Building the Future” program, which aims to provide job training opportunities to young people between the ages of 18 and 29 who are neither studying nor working. People who are part of the program can choose a job center that is registered in the program to receive training for a maximum period of 12 months, along with a monthly scholarship equivalent to the minimum wage and registration with the IMSS, both covered by the Federal Government.

The bill seeks to raise to constitutional level the obligations of the Federal Government under this program. It is important to note that the relationship between the companies and the people who are part of the program is not considered an employment relationship.

Despite employees' contributions to the National Employees' Housing Fund Institute (INFONAVIT), a large proportion of employees do not have affordable housing and rental options.

The bill proposes to grant INFONAVIT the capacity to undertake actions that strengthen the housing supply, allowing INFONAVIT to build housing that employees can acquire under a rental scheme or

as property, where rent payments do not exceed 30% of their salary, as well as provide any employee, with one year of contributions to INFONAVIT, access to rental housing owned by INFONAVIT, with the possibility of acquiring such housing if they comply with rental payments for ten years.

The bill proposes to transform the retirement pension system, under which employees who began contributing to IMSS after July 1, 1997, and who have reached the age of 65, will be entitled to receive a retirement pension equal to their last salary up to an amount equivalent to the average salary registered with the IMSS, when the pension they receive under the law is less than said average.

In order to finance the cost of the new pension system, the initiative proposes the creation of the Pension Fund for Welfare. 75% of the contributions to the fund will come from resources from agencies, Congress, the Federal Judiciary, and autonomous organs of the Mexican State.

Additionally, it is expected that contributions to the Pension Fund for Welfare will be supplemented with resources from the termination of trusts of the Federal Judiciary and the elimination of autonomous bodies, regulatory agencies, decentralized organizations, decentralized bodies, and administrative units.



BILL IN MATTERS OF WELFARE AND SOCIAL PROGRAMS



The incumbent administration has implemented a number of welfare programs financed by the Mexican State.

As part of this approach, the bill establishes commitments by the Mexican Government, including a pension for permanently disabled persons under the age of 65, the rehabilitation of persons living with permanent disabilities, and a pension for adults over the age of 65.

In addition, the bill establishes that the Mexican Government commits to guaranteeing the provision of annual grants to small-scale farmers and fisher people.

BILL REGARDING THE INCORPORATION OF THE NATIONAL GUARD INTO THE ARMED FORCES



The bill proposes the National Guard as a permanent police force under the responsibility of the Ministry of National Defense, recognizing the National Guard as an armed force with the essential function of supporting public safety, of a permanent nature, and of military origin and training.





ABOUT US



MIJARES ANGOITIA
CORTES Y FUENTES

Address

Javier Barros Sierra 540, 4o Piso, Santa Fe, Park Plaza I, Delegación Álvaro Obregón,
C.P. 01210, Ciudad de México., Mexico City, Mexico

Phone

+52 55 5201 7400

Mail

comunicacion@macf.com.mx

www.macf.com.mx

