
SUBSTITUTE HOUSE BILL 2060

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Lambert, Chandler, L. Thomas, Benson, Sterk, Carrell, Mulliken, Thompson, D. Schmidt, McDonald, Dunn, Sherstad, Smith, Bush, Buck, McMorris, Boldt, Sheahan, Dyer, Backlund, Koster, Clements, Pennington, Talcott, Delvin, Sump, Mielke, Ballasiotes, Honeyford, Van Luven, Zellinsky, Johnson, Schoesler and D. Sommers)

Read first time 03/05/97.

1 AN ACT Relating to restoring the balance of powers between the
2 branches of government as established by the people in the state
3 Constitution; adding a new chapter to Title 44 RCW; and declaring an
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 Balance of Powers Restoration Act.

8 NEW SECTION. **Sec. 2.** It is the intent of the legislature to
9 restore the balance of powers between and among the branches of
10 government as established by the people in the state Constitution, to
11 ensure that all political power is retained by the people, to protect,
12 maintain, and secure individual rights and the perpetuity of free
13 government, to guarantee the right of self-government, and to establish
14 a process for preserving the independence of the legislative,
15 executive, and judicial departments.

16 NEW SECTION. **Sec. 3.** The legislature finds the following:

1 (1) President Thomas Jefferson declared in 1807, "The Constitution
2 intended that the three great branches of government should be
3 coordinate, and independent of each other. As to acts, therefore,
4 which are to be done by either, it has given no control to another
5 branch....It did not intend to give the judiciary that control....I
6 have long wished for a proper occasion to have the gratuitous opinion
7 in *Marbury v. Madison* brought before the public, and denounced as not
8 law....the doctrines of that case were given extrajudicially and
9 against law...."

10 (2) The doctrine of judicial review that the courts have the sole
11 and final say in interpreting the Constitution on behalf of all three
12 branches of government has been subject to serious analysis and
13 criticism by scholars, jurists, and others for almost two hundred
14 years.

15 (3) The doctrine of judicial review assumes that the judiciary has
16 a superior right to conclusively decide constitutionality and, having
17 no basis in the written Constitution, should not be binding on the
18 legislative or executive branches of government acting within their
19 express spheres of authority provided for in the Constitution.

20 (4) It is a fundamental principle that all political power is
21 inherent in the people and not in the institutions of government, that
22 the very purpose of a written constitution is to establish fundamental
23 and paramount law, that any act of the legislative, executive, or
24 judicial branches of government repugnant to the Constitution must be
25 void, and that nowhere is it stated in the Constitution that the
26 judiciary has the ultimate right to say what is constitutional and to
27 order the other branches of government to concur with its determination
28 as a matter of constitutional law.

29 (5) For the judiciary to ". . .decide what laws are constitutional
30 and what are not, not only for themselves in their own sphere of
31 action, but for the legislative and executive also in their spheres,
32 would make the judiciary a despotic branch. . ." (Thomas Jefferson,
33 1804) and lead to tyranny by government, the precise thing the people
34 of this state intended to prevent by establishing a constitutional
35 representative government in order to secure the rights of life,
36 liberty, and the pursuit of happiness for each individual citizen.

37 (6) Because the judiciary has used the doctrine of judicial review
38 to override the self-expression of a free people and to override duly
39 enacted laws, even those of long standing in both form and practice,

1 the legislature is compelled to reassert its constitutional
2 prerogatives and restore the balance of powers established in the
3 fundamental and paramount law.

4 (7) The respect, deference, and accommodation given to the opinions
5 of the judiciary by the legislative and executive branches are based on
6 the intellectual integrity of the court's reasoning in interpreting a
7 statute, considering and conforming to the plain meaning of the words
8 contained in it, the intent of the legislators who enacted the statute,
9 the historical context in which the legislation was passed, and a
10 reasonable application of the law to the facts before the court.

11 (8) Officials in the legislative, executive, and judicial branches
12 are sworn to ultimately uphold the Constitution, not the meaning given
13 it by another branch. If legislative, executive, or judicial officials
14 act unconstitutionally they are ultimately responsible to the
15 electorate and are held accountable exclusively and directly by the
16 people alone.

17 NEW SECTION. **Sec. 4.** If the supreme court or a court of appeals
18 of the state of Washington determines that a legislative act, or any
19 part of an act, violates the Washington state Constitution, the
20 conflict between the two equal branches of government will be resolved
21 as follows:

22 (1) Upon determining that it considers a legislative act to be in
23 conflict with the Constitution, the court shall declare its opinion
24 that it considers the act to be void and unenforceable.

25 (2) The opinion of the court that an act of the legislature is
26 unconstitutional is the law of the case before the court unless and
27 until overruled by a higher court but extends no further than the facts
28 of the case. Although the doctrine of stare decisis does not oblige
29 the judiciary to perpetuate its own errors, the judicial branch is the
30 proper branch to determine when and how to apply a rule laid down in a
31 particular case in a subsequent case involving identical or
32 substantially similar facts.

33 (3) The house and the senate during a regular or special session of
34 the legislature may vote by a constitutional majority to expressly
35 affirm the constitutionality of the legislative act and to expressly
36 reject the determination of the court.

37 (4) A vote to affirm the constitutionality of the legislative act
38 must be taken forthwith upon the written demand of one-sixth of the

1 members of the house or senate, and the names of the members voting for
2 and against the affirmation must be entered on the journal of each
3 house.

4 (5) The question before each house must read exclusively, "The
5 legislature determines, declares, and affirms that (the act
6 designated by bill number and chapter number as indicated in the
7 session laws, whether codified or uncodified) as enacted is
8 constitutional, the opinion of the judiciary notwithstanding."

9 (6) The question must be placed so that a yea vote is to affirm the
10 constitutionality of the legislative act and a nay vote is to affirm
11 the opinion of the judiciary.

12 (7) Upon a positive vote by both the house and the senate to affirm
13 the constitutionality of the legislative act, the legislative
14 determination is effective immediately, and the legislative act under
15 consideration is binding on all persons affected by it from the
16 effective date of the act, notwithstanding the opinion of the
17 judiciary, but the decision of the case remains binding on the parties
18 to it.

19 (8) A determination yea or nay by the legislature is subject to the
20 right of referendum power reserved to the people under Article I,
21 section 1 of the Washington state Constitution, and the question before
22 the people must read exclusively, "The people determine, declare, and
23 affirm that (the act designated by bill number and chapter
24 number as indicated in the session laws, whether codified or
25 uncodified) as enacted is constitutional, the opinion of the judiciary
26 notwithstanding."

27 NEW SECTION. **Sec. 5.** If the legislature is not in session, the
28 house and the senate may express their sentiment to affirm the
29 constitutionality of the legislative act by a vote of a majority of the
30 members of each house. A vote to express the legislative sentiment to
31 affirm the constitutionality of the legislative act must be taken
32 forthwith upon the written demand of one-sixth of the members of the
33 house or senate, and the names of the members voting for and against
34 the affirmation or not voting must be made available to the public.
35 The question before each member must read exclusively as stated in
36 section 4 of this act and must be submitted to each member individually
37 in written form. The form must be signed by each member voting yea or
38 nay and returned to the speaker of the house or the majority leader of

1 the senate no later than thirty days from the date of the demand. If
2 there is a positive vote by members of both the house and the senate to
3 express the legislative sentiment to affirm the constitutionality of
4 the legislative act, the legislature shall vote on whether to affirm
5 the constitutionality of the legislative act as the first order of
6 business after the next legislative session is convened.

7 NEW SECTION. **Sec. 6.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
12 a new chapter in Title 44 RCW.

13 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
14 preservation of the public peace, morals, health, or safety, or support
15 of the state government and its existing public institutions, and takes
16 effect immediately.

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