H-1451.3

HOUSE BILL 2060

State of Washington 55th Legislature 1997 Regular Session

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 02/19/97. Referred to Committee on Law & Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The opinion of the court that an act of the legislature is unconstitutional is the law of the case before the court unless and until overruled by a higher court but extends no further than the facts of the case.

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

(4) A vote to affirm the constitutionality of the legislative act must be taken forthwith upon the written demand of one-sixth of the members of the house or senate, and the names of the members voting for and against the affirmation must be entered on the journal of each house.

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

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

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

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

NEW SECTION. **Sec. 5.** If the legislature is not in session, the house and the senate may express their sentiment to affirm the constitutionality of the legislative act by a vote of a majority of the members of each house. A vote to express the legislative sentiment to affirm the constitutionality of the legislative act must be taken forthwith upon the written demand of one-sixth of the members of the house or senate, and the names of the members voting for and against the affirmation or not voting must be made available to the public. The question before each member must read exclusively as stated in section 4 of this act and must be submitted to each member individually in written form. The form must be signed by each member voting yea or nay and returned to the speaker of the house or the majority leader of the senate no later than thirty days from the date of the demand. If there is a positive vote by members of both the house and the senate to express the legislative sentiment to affirm the constitutionality of

the legislative act, the legislature shall vote on whether to affirm the constitutionality of the legislative act as the first order of business after the next legislative session is convened.

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

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

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

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