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HOUSE BILL 1072

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Koster, Young, and Shea

Prefiled 01/06/17. Read first time 01/09/17. Referred to Committee on Judiciary.

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  
12 protect, maintain, and secure individual rights and the perpetuity of  
13 free government, to guarantee the right of self-government, and to  
14 establish a process for preserving the independence of the  
15 legislative, executive, and judicial departments.

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

17 (1) President Thomas Jefferson declared in 1807, "The  
18 Constitution intended that the three great branches of government  
19 should be coordinate, and independent of each other. As to acts,

1 therefore, which are to be done by either, it has given no control to  
2 another branch....It did not intend to give the judiciary that  
3 control....I have long wished for a proper occasion to have the  
4 gratuitous opinion in *Marbury v. Madison* brought before the public,  
5 and denounced as not law...the doctrines of that case were given  
6 extrajudicially and against law...."

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

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

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

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

35 (6) Because the judiciary has used the doctrine of judicial  
36 review to override the self-expression of a free people and to  
37 override duly enacted laws, even those of long standing in both form  
38 and practice, the legislature is compelled to reassert its  
39 constitutional prerogatives and restore the balance of powers  
40 established in the fundamental and paramount law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act  
9 constitute a new chapter in Title 44 RCW.

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

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