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HOUSE BILL 1188

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State of Washington                      58th Legislature                      2003 Regular Session

By Representatives Boldt, Mielke and McMahan

Read first time 01/20/2003. 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.** The declaration of rights contained in our  
9 Washington state Constitution, Article I, section 32 states that, "A  
10 frequent recurrence to fundamental principles is essential to the  
11 security of individual right and the perpetuity of free government."  
12 It is the intent of the legislature to reaffirm those fundamental  
13 principles and to restore the balance of powers between and among the  
14 branches of government as established by the people in the state  
15 Constitution, to ensure that all political power is retained by the  
16 people, to protect, maintain, and secure individual rights and the  
17 perpetuity of free government, to guarantee the right of self-

1 government, and to establish a process for preserving the independence  
2 of the legislative, executive, and judicial departments.

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

4 (1) Alexander Hamilton declared in 1778 that if judges "should be  
5 disposed to exercise will instead of judgment the consequence would  
6 equally be the substitution of their pleasure for that of the  
7 legislative body."

8 Thomas Jefferson declared in 1807, "The Constitution intended that  
9 the three great branches of government should be coordinate, and  
10 independent of each other. As to acts, therefore, which are to be done  
11 by either, it has given no control to another branch....It did not  
12 intend to give the judiciary that control."

13 Abraham Lincoln declared in 1861, "... the candid citizen must  
14 confess that if the policy of the government upon vital questions,  
15 affecting the whole people, is to be irrevocably fixed by decisions of  
16 the Supreme Court, the instant they are made, in ordinary litigation  
17 between parties, in personal actions, the people will have ceased to be  
18 their own rulers, having to that extent practically resigned their  
19 government into the hands of that eminent tribunal."

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

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

30 (4) It is a fundamental principle that all political power is  
31 inherent in the people and not in the institutions of government, that  
32 the very purpose of a written constitution is to establish fundamental  
33 and paramount law, that any act of the legislative, executive, or  
34 judicial branches of government repugnant to the Constitution must be  
35 void, and that nowhere is it stated in the Constitution that the  
36 judiciary has the ultimate right to say what is constitutional and to

1 order the other branches of government to concur with its determination  
2 as a matter of constitutional law.

3 (5) For the judiciary to ". . .decide what laws are constitutional  
4 and what are not, not only for themselves in their own sphere of  
5 action, but for the legislative and executive also in their spheres,  
6 would make the judiciary a despotic branch. . ." (Thomas Jefferson,  
7 1804) and lead to tyranny by government, the precise thing the people  
8 of this state intended to prevent by establishing a constitutional  
9 representative government in order to secure the rights of life,  
10 liberty, and the pursuit of happiness for each individual citizen.

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

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

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

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

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

1 (2) The opinion of the court that an act of the legislature is  
2 unconstitutional is the law of the case before the court unless and  
3 until overruled by a higher court but extends no further than the facts  
4 and the parties of the case. Although the doctrine of stare decisis  
5 does not oblige the judiciary to perpetuate its own errors, the  
6 judicial branch is the proper branch to determine when and how to apply  
7 a rule laid down in a particular case to parties in a subsequent case  
8 involving identical or substantially similar facts.

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

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

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

23 (6) The question must be placed so that a yea vote is to affirm the  
24 constitutionality of the legislative act.

25 (7) Upon a positive vote by both the house and the senate to affirm  
26 the constitutionality of the legislative act, the legislative  
27 determination is effective immediately, and the legislative act under  
28 consideration is considered by the legislature to be binding on all  
29 persons affected by it from the original effective date of the act,  
30 notwithstanding the opinion of the judiciary, although the decision of  
31 the case remains binding on the parties to the case.

32 (8) A determination yea or nay by the legislature is hereby  
33 declared subject to the right of referendum power as reserved to the  
34 people under Article I, section 1 of the Washington state Constitution,  
35 and the question before the people must read exclusively, "The people  
36 determine, declare, and affirm that . . . . . (the act designated by bill  
37 number and chapter number as indicated in the session laws, whether

1 codified or uncodified) as enacted is constitutional, the opinion of  
2 the judiciary notwithstanding."

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

7 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
8 preservation of the public peace, morals, health, or safety, or support  
9 of the state government and its existing public institutions, and takes  
10 effect immediately.

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

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