

HOUSE BILL ANALYSIS

HB 2060

Title: An act relating to restoring the balance of powers between the branches of government as established by the people in the state Constitution.

Brief Description: Restoring the balance of powers between branches of the government.

Sponsors: 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.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Trudes Hutcheson (786-7384).

Background: The United States Constitution establishes the legislative, executive, and judicial branches of government. The Constitution does not explicitly state that the United States Supreme Court may determine the constitutionality of acts of other branches of government. However, in *Marbury v. Madison*, 5 U.S. 137 (1803), the Court determined that the federal judiciary had the power to review legislative and executive acts and, if necessary, declare such acts unconstitutional. Before *Marbury*, constitutional analysis was dominated by Congress and the President. For example, in 1798 Congress passed the Alien and Sedition Acts, which prohibited citizens from criticizing their own government. When Thomas Jefferson became President in 1801, he declared the Sedition Act a nullity and pardoned every person prosecuted under it.

Marbury has generated numerous debates on the subject of judicial review. Some commentaries argue that the power to interpret the Constitution is solely within the judiciary. Their argument is based on three propositions. First, the Constitution is the supreme law of the land, and Congress may not pass a law contrary to the Constitution. Second, because it is the duty of the judiciary to decide cases in accordance with the law, courts must interpret the Constitution. Third, if courts are to interpret and enforce the Constitution, and the Constitution is superior to any ordinary act of Congress, the Constitution, and not the congressional act, must control.

Other commentaries argue that the Constitution does not grant the courts the power of judicial review. Instead, the right to interpret the constitution should be exercised by

all branches of government equally, including the courts. They argue that the courts may determine the constitutionality of certain acts, but that such a determination should be binding only upon the case before the court. Courts would not ignore the Constitution, but would treat the legislative interpretation as definitive, and leave to Congress the task of resolving apparent conflicts between statute and the Constitution. Other countries have adopted this approach in their constitutions and courts. For example, courts in England and France generally do not review the validity of Parliament's acts.

Like the federal judiciary, Washington's supreme court and court of appeals exercise the power of judicial review over the acts of the state legislative and executive branches.

Summary of Bill: The Legislature finds that the judiciary's interpretation of the state constitution is only one branch of government's interpretation of the constitution and should not be binding upon the legislative or executive branches.

If the state supreme court or the court of appeals determines that a legislative act, or any part of an act, violates the state constitution, the court shall declare its opinion that it considers the act to be void and unenforceable. The court's opinion is the law of the case before it, and extends no further than the facts of the case.

The Legislature, during regular or special session, may vote by a constitutional majority, to affirm the constitutionality of the legislative act and reject the court's opinion.

If the Legislature affirms the constitutionality of the legislative act, that determination is effective immediately. The legislative act is binding from the effective date of the act, regardless of the court's determination. However, the court's decision of the case remains binding on the parties involved in the case.

The Legislature's determination is subject to a referendum power reserved to the people.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Office of Program Research