

## Legislation Law amendments can reconcile the conflict between reform and law and avoid loss of legislative power

立法法修改可协调改革和法律冲突，避免法律权威流失

10 Mar 2015 Interview with YOU Quanrong 采访游劝荣 *The Paper*

YOU Quanrong 游劝荣 NPC delegate and Hunan People's Procuratorate chief procurator

rule of law 法治

NPC oversight targets extra-legality and helps to strengthen rule of law. The NPC's authority to interpret legislation, previously dead in the water, will now be revived at the expense of the Supreme Court and Procuratorate.



You Quanrong 游劝荣

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The *Legislation Law* amendment is significant, argues You Qianrong, as it effectively reconciles conflict between reform and law, ensuring major reforms have a legal basis.

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The revisions solve this issue, states You, by requiring that all reforms are based on law. ... 'The NPC and its Standing Committee can suspend some clauses in existing laws for special matters in specific places according to reform and development requirements'. The FTZ is a typical example.

These provisions ensure reforms can proceed with a legal foundation or at least without violating laws. The authority of the law is preserved.

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To ensure the quality of local legislation, You offers four proposals: first, legislation can only be enacted when socio-economic conditions require it; laws are not to be framed for the sake of it; second, legislatures should improve their lawmaking capabilities and step up the training of representatives and Standing Committee members; third, build up local legislative institutions and personnel to form top-class teams who are loyal to the Party and good at what they do; and fourth, speed up the construction of a legal system in line with the *Legislation Law* to enforce the principle of rational and democratic legislation and ensure the quality of local legislation.

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There have been some misguided judicial interpretations in the past that have drawn public criticism. Some have gone beyond the original intention of the law, some expanded the scope of the law, some too detailed and excessive, and some even directly in conflict with the spirit of the law. ...

This is addressed in the draft amendments. Judicial interpretations of the Supreme People's Court and Procuratorate may only, they make clear, address specific clauses in laws, and only in accordance with the purpose, princi-

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游劝荣认为，立法法修改的一个重大意义，是有效地调适改革和法律的冲突，实现重大改革于法有据。

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游劝荣称，现在立法法修改解决了这个问题，立法法修正案草案要求所有的改革都要于法有据。..... “全国人大及其常委会可以根据改革发展的需要，决定就行政管理等领域的特定事项授权在部分地方暂停适用法律的部分规定”。最典型的例子就是自贸区。

上述规定能够让改革在有法律依据或者说不违法的情况下进行，另一方面法律的权威也得到了维护。

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为保证地方立法质量，他提出四点建议：一是地方的经济社会发展对立法确实有需求才进行立法，不能为了立法而立法；二是立法机关要提高立法者的能力和水平，加强对人大代表、常委会组成人员的教育，提高立法的能力和水平；三是加强地方立法工作机构和立法专业队伍建设，形成一支政治强、业务硬的高素质队伍；四是加快跟立法法衔接的相关立法制度的建设，以保证科学立法、民主立法原则的贯彻，保证地方立法质量。

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过去有一些司法解释存在一些偏差，社会上也有一些批评。有的司法解释超出了立法的原意，有的司法解释扩大了法律规定的范围，有的司法解释过多过滥，甚至有个别地方跟法律的精神是冲突的。.....

此次立法法修正案草案都做了针对性的规定，明确“两高”的司法解释应当主要针对具体的法律条文，并符合立法的目的、原则和原意。超出这个范围的，“两高”只能向全国人大常

ples, and intent of the law. Beyond that, the two bodies can only submit proposals to the NPC Standing Committee requesting legislative interpretation, new laws or legal amendments.

The draft amendment requires judicial interpretations from the Supreme People's Court and Procuratorate to be submitted to the NPC Standing Committee for recording. ...

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委会提出解释法律的议案，请求立法机关做出立法解释，或者制定法律和修改法律。

立法法修正案草案要求，“两高”制定的司法解释要报全国人大常委会备案。.....

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