

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 536

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO JUDICIAL REVIEW OF COUNTY ROAD OR HIGHWAY DISTRICT DECISIONS;  
2 AMENDING SECTION 40-208, IDAHO CODE, TO PROVIDE THAT EITHER PARTY TO A  
3 PROCEEDING MAY REQUEST APPOINTMENT OF A JUDGE WHO IS NOT A RESIDENT OF  
4 THE COUNTY WHERE THE ROAD OR PROPERTY IS LOCATED AND TO MAKE TECHNICAL  
5 CORRECTIONS.  
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7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 40-208, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 40-208. JUDICIAL REVIEW. (1) Any resident or property holder within  
11 the county or highway district system, including the state of Idaho or any of  
12 its subdivisions, or any agency of the federal government, who is aggrieved  
13 by a final decision of a board of county or highway district commissioners in  
14 an abandonment and vacation or validation proceeding is entitled to judicial  
15 review under the provisions of this section.

16 (2) Proceedings for review are instituted by filing a petition in the  
17 district court of the county in which the commissioners have jurisdiction  
18 over the highway or public right-of-way within twenty-eight (28) days after  
19 the filing of the final decision of the commissioners or, if a rehearing is  
20 requested, within twenty-eight (28) days after the decision thereon.

21 (3) The filing of the petition does not itself stay enforcement of the  
22 commissioners' decision. The reviewing court may order a stay upon appro-  
23 priate terms.

24 (4) Within thirty (30) days after the service of the petition, or within  
25 further time allowed by the court, the commissioners shall transmit to the  
26 reviewing court the original, or a certified copy, of the entire record of  
27 the proceeding under review. By stipulation of all parties to the review  
28 proceedings, the record may be shortened. A party unreasonably refusing to  
29 stipulate to limit the record may be ordered by the court to pay for addi-  
30 tional costs. The court may require subsequent corrections to the record and  
31 may also require or permit additions to the record.

32 (5) The parties may present additional evidence to the court, upon a  
33 showing to the court that such evidence is material to the issues presented  
34 to the court. In such case, the court may order that the additional infor-  
35 mation be presented to the commissioners upon conditions determined by the  
36 court. The commissioners may modify their findings and decisions by reason  
37 of the additional information and shall file that information and any modi-  
38 fications, new findings, or decisions with the reviewing court.

39 (6) Either party to a proceeding may request in writing that a judge  
40 who resides outside the county where the subject road or property is located  
41 be appointed to hear the case, and, upon such written request, such a judge  
42 shall be appointed for the case. The review shall be conducted by the court

1 without a jury. The court shall consider the record before the board of  
2 county or highway district commissioners and shall defer to the board of  
3 county or highway district commissioners on matters in which such board has  
4 appropriately exercised its discretion with respect to the evaluation of the  
5 public interest. As to the determination of highway or public right-of-way  
6 creation, width and abandonment, the court may accept new evidence and  
7 testimony supplemental to the record provided by the county or highway dis-  
8 trict, and the court shall consider those issues anew. In cases of alleged  
9 irregularities in procedure before the commissioners, not shown in the  
10 record, proof thereon may be taken in the court. The court, upon request,  
11 shall hear oral argument and receive written briefs.

12 (7) Any person other than a board of county or highway district com-  
13 missioners seeking a determination of the legal status or the width of a  
14 highway or public right-of-way shall first petition for the initiation of  
15 validation or abandonment proceedings, or both, as provided for in sections  
16 40-203(1) (b) and 40-203A(1), Idaho Code. If the commissioners having juris-  
17 diction over the highway system do not initiate a proceeding in response to  
18 such a petition within thirty (30) days, the person may seek a determination  
19 by quiet title or other available judicial means. When the legal status  
20 or width of a highway or public right-of-way is disputed and where a board  
21 of county or highway district commissioners wishes to determine the legal  
22 status or width of a highway or public right-of-way, the commissioners shall  
23 initiate validation or abandonment proceedings, or both, as provided for in  
24 sections 40-203 and 40-203A, Idaho Code, rather than initiating an action  
25 for quiet title. If proceedings pursuant to the provisions of section 40-203  
26 or 40-203A, Idaho Code, are initiated, those proceedings and any appeal  
27 or remand therefrom shall provide the exclusive basis for determining the  
28 status and width of the highway, and no court shall have jurisdiction to de-  
29 termine the status or width of said highway except by way of judicial review  
30 provided for in this section. Provided that nothing in this subsection shall  
31 preclude determination of the legal status or width of a public road in the  
32 course of an eminent domain proceeding, as provided for in chapter 7, title  
33 7, Idaho Code.