

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 246

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO LEGAL ACTIONS; AMENDING SECTION 6-401, IDAHO CODE, TO PROVIDE  
2 FOR EXCEPTIONS; AND AMENDING SECTION 40-208, IDAHO CODE, TO PROVIDE  
3 THAT CERTAIN LAWS SHALL PROVIDE THE EXCLUSIVE METHOD FOR DETERMINING  
4 WHETHER ANY ROAD OR RIGHT-OF-WAY WITHIN THE JURISDICTION OF A COUNTY OR  
5 HIGHWAY DISTRICT IS OR SHALL CONTINUE TO BE A PUBLIC HIGHWAY OR PUBLIC  
6 RIGHT-OF-WAY AND TO MAKE A TECHNICAL CORRECTION.  
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8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 6-401, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 6-401. ACTIONS TO QUIET TITLE. Except as otherwise provided by law,  
12 aAn action may be brought by any person against another who claims an es-  
13 tate or interest in real or personal property adverse to him, for the purpose  
14 of determining such adverse claim, provided that all actions to adjudicate  
15 water rights and obtain a decree as to water source, quantity, point of di-  
16 version, place of use, nature of use, period of use, and priority as against  
17 other water users shall be brought under the provisions of chapter 14, title  
18 42, Idaho Code.

19 SECTION 2. That Section 40-208, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 40-208. JUDICIAL REVIEW. (1) Any resident or property holder within  
22 the county or highway district system, including the state of Idaho or any of  
23 its subdivisions, or any agency of the federal government, who is aggrieved  
24 by a final decision of a board of county or highway district commissioners in  
25 an abandonment and vacation or validation proceeding is entitled to judicial  
26 review under the provisions of this section.

27 (2) Proceedings for review are instituted by filing a petition in the  
28 district court of the county in which the commissioners have jurisdiction  
29 over the highway or public right\_of\_way within twenty-eight (28) days after  
30 the filing of the final decision of the commissioners or, if a rehearing is  
31 requested, within twenty-eight (28) days after the decision thereon.

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

35 (4) Within thirty (30) days after the service of the petition, or within  
36 further time allowed by the court, the commissioners shall transmit to the  
37 reviewing court the original, or a certified copy, of the entire record of  
38 the proceeding under review. By stipulation of all parties to the review  
39 proceedings, the record may be shortened. A party unreasonably refusing to  
40 stipulate to limit the record may be ordered by the court to pay for addi-

1 tional costs. The court may require subsequent corrections to the record and  
2 may also require or permit additions to the record.

3 (5) If, before the date set for hearing, application is made to the  
4 court for leave to present additional information, and it is shown to the  
5 satisfaction of the court that the additional information is material and  
6 that there were good reasons for failure to present it in the proceeding be-  
7 fore the commissioners, the court may order that the additional information  
8 shall be presented to the commissioners upon conditions determined by the  
9 court. The commissioners may modify their findings and decisions by reason  
10 of the additional information and shall file that information and any modi-  
11 fications, new findings, or decisions with the reviewing court.

12 (6) The review shall be conducted by the court without a jury and shall  
13 be confined to the record. In cases of alleged irregularities in procedure  
14 before the commissioners, not shown in the record, proof thereon may be taken  
15 in the court. The court, upon request, shall hear oral argument and receive  
16 written briefs.

17 (7) The court shall not substitute its judgment for that of the com-  
18 missioners as to the weight of the information on questions of fact. The  
19 court may affirm the decision of the commissioners or remand the case for  
20 further proceedings. The court may reverse or modify the decision if sub-  
21 stantial rights of the appellant have been prejudiced because the commis-  
22 sioners' findings, inferences, conclusions or decisions are:

23 (a) In violation of constitutional or statutory provisions;

24 (b) In excess of the statutory authority of the commissioners;

25 (c) Made upon unlawful procedure;

26 (d) Affected by other error of law;

27 (e) Clearly erroneous in view of the reliable, probative and substan-  
28 tial information on the whole record; or

29 (f) Arbitrary or capricious or characterized by abuse of discretion or  
30 clearly unwarranted exercise of discretion.

31 (8) The provisions of sections 40-203, 40-203A, 40-204A and 40-208,  
32 Idaho Code, and not section 6-401, Idaho Code, shall provide the exclusive  
33 method for determining whether any road or right-of-way within the juris-  
34 isdiction of a county or highway district is or shall continue to be a public  
35 highway or public right-of-way.