

## **Lawsuit lives as bill dies**

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State Rep. Tom Loertscher, R-Bone, helped kill a bill in the last legislative session that would have impeded his pending lawsuit, which seeks to close access roads through his property near Bone Road.

While the bill was in his committee, Loertscher said he convinced the measure's author to pull it from consideration. It never went to a full vote of the House.

That cleared the way for Loertscher and three other local landowners to file the lawsuit, which would close roads that cross their properties.

Filed in April, the lawsuit depends on a section of Idaho law that allows one landowner to sue another if they disagree about which of them owns a piece of land.

Both JoAn Wood, R-Rigby, who chairs Ways and Means, and Leon Smith, R-Twin Falls, the then-chairman of the Transportation Committee, said the bill was moved suddenly into Loertscher's State Affairs Committee.

Public records confirm that when House Bill 246 landed there, Loertscher already was in conflict with Bonneville County over the access roads.

Loertscher's suit claims that three roads on the official county map actually are private roads and asks a judge to confirm that claim.

Kevin Eckersell of the county's Road and Bridge Department said the roads are on the map because they appear on old lists of county roads. There is no record that they were abandoned, he said.

If the lawsuit succeeds, nearby property owners who use those roads would not be able to do so without permission from Loertscher or former state legislator Stan Hawkins, who also is involved in the litigation.

The bill Loertscher killed would have forced him and Hawkins to go through the county process for determining which roads are public before they could file the lawsuit. The county's process involves public hearings, at which surrounding landowners can present their cases for whether a road is public or private.

Hawkins' and Loertscher's neighbors have asked for hearings on all three roads in the lawsuit.

Stuart Davis of the Idaho Association of Highway Districts said he wrote HB 246 because several Idaho counties have faced uncertainty over this issue. In some of them, such as Cassia County, lawsuits such as Loertscher's have left county residents without a clear road map for years.

"Basically, what this bill would have done would be to make the county's process the first recourse if you wanted a road kept public or made private," Davis said. "For a lot of landowners, that's an easier

process because you don't have to pay to bring a lawyer into it."

Before a full vote, bills are vetted by one of several specialized committees. In the House, the speaker has almost total authority over committee assignments, though committee chairmen can request bills.

HB 246 was introduced in the Ways and Means Committee, then assigned to the Transportation Committee, which handles state and local highways. It was removed from Transportation into State Affairs before it appeared on a Transportation agenda.

Once the bill was in State Affairs, it never received a hearing.

"I talked to (Davis) and I pointed out to him some problems I had with the bill," Loertscher said. "I thought it was prejudiced against private property owners and gave the county too much power."

Loertscher said he suggested that because the session was nearing its end -- the bill landed in State Affairs on March 10 -- Davis should work on the bill over the next year and try again.

Davis said he never asked for a hearing after that conversation.

County commissioners announced their intention to include the disputed roads on the official county road map in late 2010.

Loertscher and Hawkins both attended a Dec. 15 public hearing dealing with Loertscher's property, according to sign-in sheets from the hearing. Both men said they disagreed with the county's process.

County commissioners declined to comment on the issue because of the pending lawsuit.

The official road map, minus the contested roads, was adopted May 16.

No trial date has been set for the Loertscher and Hawkins' lawsuit.