

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0009.01 Jennifer Berman x3286

SENATE BILL 17-036

SENATE SPONSORSHIP

Scott and Coram,

HOUSE SPONSORSHIP

Arndt and Becker J.,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

Judiciary

A BILL FOR AN ACT

101 **CONCERNING THE APPELLATE PROCESS GOVERNING A DISTRICT**
102 **COURT'S REVIEW OF FINAL AGENCY ACTIONS CONCERNING**
103 **GROUNDWATER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Under current law, the decisions or actions of the ground water commission (commission) or the state engineer regarding groundwater are appealed to a district court, and the evidence that the district court may consider is not limited to the evidence that was presented to the commission or state engineer. Therefore, unlike appeals from other state

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 14, 2017

SENATE
2nd Reading Unamended
February 13, 2017

agencies' decisions or actions under the "State Administrative Procedure Act", a party appealing a decision or action of the commission or state engineer may present new evidence on appeal that was never considered by the commission or state engineer.

The bill limits the evidence that a district court may consider, when reviewing a decision or action of the commission or state engineer on appeal, to the evidence presented to the commission or state engineer.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 37-90-113, **add** (4)
3 as follows:

4 **37-90-113. Hearings.** (4) IN ADDITION TO ANY AUTHORITY
5 ESTABLISHED BY RULE BY THE COMMISSION FOR COMMISSION MATTERS TO
6 BE REFERRED TO ALTERNATIVE DISPUTE RESOLUTION, THE COMMISSION OR
7 AN AGENT DESIGNATED BY THE COMMISSION PURSUANT TO SUBSECTION
8 (2) OF THIS SECTION MAY REFER A MATTER BEFORE THE COMMISSION TO
9 ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO SECTION 13-22-313.

10 **SECTION 2.** In Colorado Revised Statutes, 37-90-115, **amend**
11 (1)(b)(III) as follows:

12 **37-90-115. Judicial review of actions of the ground water**
13 **commission or the state engineer.** (1) (b) (III) ~~Proceedings upon appeal~~
14 ~~shall be de novo; except that evidence taken in any administrative~~
15 ~~proceeding appealed from may be considered as original evidence,~~
16 ~~subject to legal objection, as if said evidence were originally offered in~~
17 ~~such district court~~ A DISTRICT COURT SHALL REVIEW THE COMMISSION'S
18 OR STATE ENGINEER'S DECISION OR ACTION DE NOVO, CONSIDERING ONLY
19 EVIDENCE THAT WAS TAKEN IN THE ADMINISTRATIVE PROCEEDING
20 APPEALED FROM AND INCLUDED IN THE RECORD. THE DISTRICT COURT
21 SHALL CONSIDER EVIDENCE IN ITS DETERMINATION OF THE MATTER IF THE
22 EVIDENCE:

1 (A) WAS WRONGLY EXCLUDED AT THE ADMINISTRATIVE
2 PROCEEDING; OR

3 (B) EXISTED AT THE TIME OF THE ADMINISTRATIVE PROCEEDING
4 BUT WAS DISCOVERED AFTER THE ADMINISTRATIVE PROCEEDING AND, IN
5 THE EXERCISE OF GOOD FAITH AND REASONABLE DILIGENCE, COULD NOT
6 HAVE BEEN MADE AVAILABLE AND OFFERED AT THE ADMINISTRATIVE
7 PROCEEDING.

8 **SECTION 3. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
10 the expiration of the ninety-day period after final adjournment of the
11 general assembly (August 9, 2017, if adjournment sine die is on May 10,
12 2017); except that, if a referendum petition is filed pursuant to section 1
13 (3) of article V of the state constitution against this act or an item, section,
14 or part of this act within such period, then the act, item, section, or part
15 will not take effect unless approved by the people at the general election
16 to be held in November 2018 and, in such case, will take effect on the
17 date of the official declaration of the vote thereon by the governor.

18 (2) This act applies to appeals filed on or after the applicable
19 effective date of this act.