

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

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BILL 9

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LLS NO. 15-0117 Jennifer Berman x 3286

INTERIM COMMITTEE BILL

Water Resources Review Committee

BILL TOPIC: "Appellate Process For Decisions About Groundwater"

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://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. Decisions or actions of the ground water commission (commission) or the state engineer regarding groundwater are appealed to a district court. Under current statute, the evidence that a district court may consider on appeal when reviewing a

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

decision or action of the commission or state engineer is not limited to the evidence presented to the commission or state engineer. Therefore, unlike appeals from other state 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 the state engineer on appeal to the evidence presented to the commission or the state engineer.

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

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

4 **37-90-115. Judicial review of actions of the ground water**
5 **commission or the state engineer.** (1) (b) (III) ~~Proceedings upon appeal~~
6 ~~shall be de novo; except that evidence taken in any administrative~~
7 ~~proceeding appealed from may be considered as original evidence,~~
8 ~~subject to legal objection, as if said evidence were originally offered in~~
9 ~~such district court~~ IN REVIEWING THE COMMISSION'S OR STATE ENGINEER'S
10 DECISION OR ACTION PURSUANT TO THIS SECTION, A DISTRICT COURT
11 SHALL CONSIDER THE RECORD OF THE ADMINISTRATIVE PROCEEDING
12 APPEALED FROM, INCLUDING THE PLEADINGS, APPLICATIONS, EVIDENCE,
13 A FULL TRANSCRIPT OF THE PROCEEDINGS, EXHIBITS, AND OTHER PAPERS
14 PRESENTED TO OR CONSIDERED BY THE COMMISSION OR STATE ENGINEER,
15 RULINGS UPON EXCEPTIONS, AND THE DECISION, FINDINGS, AND ACTION OF
16 THE COMMISSION OR STATE ENGINEER. A DISTRICT COURT SHALL NOT
17 CONSIDER EVIDENCE OTHER THAN THE EVIDENCE THAT WAS TAKEN IN THE
18 ADMINISTRATIVE PROCEEDING APPEALED FROM AND INCLUDED IN THE
19 RECORD. A DISTRICT COURT SHALL REVIEW THE COMMISSION'S OR STATE
20 ENGINEER'S DECISION OR ACTION DE NOVO.

1 (IV) It is the duty of the commission or the state engineer, upon
2 being served with a notice of appeal pursuant to this section, to transmit
3 to the district court to which the appeal is taken the ~~papers, maps, plats,~~
4 ~~field notes, orders, decisions, and other available data affecting the matter~~
5 ~~in controversy or certified copies thereof, which certified copies shall be~~
6 ~~admitted in evidence as of equal validity with the originals~~ RECORD, AS
7 DESCRIBED IN SUBSECTION (III) OF THIS PARAGRAPH (b). THE PERSON
8 INITIATING JUDICIAL REVIEW UNDER THIS SECTION IS RESPONSIBLE FOR ALL
9 COSTS ASSOCIATED WITH TRANSMITTING THE RECORD, INCLUDING THE
10 COST OF TRANSCRIBING THE PROCEEDINGS.

11 **SECTION 2. Applicability.** This act applies to appeals filed on
12 or after the effective date of this act.

13 **SECTION 3. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.