

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

951Y0494

HOUSE BILL NO. 1187

Introduced by: Representatives Kettwig, Chase, Johns, Lake, Mickelson, Otten (Herman), Peterson (Kent), Qualm, Reed, Rhoden, Rozum, Tieszen, Tulson, and Turbiville and Senators Youngberg, Cronin, Curd, Klumb, Kolbeck, Maher, Novstrup, Otten (Ernie), and Partridge

1 FOR AN ACT ENTITLED, An Act to revise the process by which courts consider appeals of
2 decisions regarding conditional use requests.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 11-2 be amended by adding a NEW SECTION to read:

5 The decision of any approving authority as to an application or request for a conditional use
6 pursuant to chapter 11-2 is conclusive in the absence of fraud or arbitrary and gross abuse of
7 discretion. Any appeal of this decision shall be brought under a petition, duly verified, for a writ
8 of certiorari directed to the approving authority and, notwithstanding any provision of law to the
9 contrary, shall be determined under a writ of certiorari standard regardless of the form of the
10 approving authority. The court shall give deference to the decision of the approving authority
11 in interpreting its ordinances and determining any facts.

12 Section 2. That chapter 11-4 be amended by adding a NEW SECTION to read:

13 The decision of any approving authority as to an application or request for a conditional use
14 pursuant to chapter 11-4 is conclusive in the absence of fraud or arbitrary and gross abuse of



1 discretion. Any appeal of this decision shall be brought under a petition, duly verified, for a writ
2 of certiorari directed to the approving authority and, notwithstanding any provision of law to the
3 contrary, shall be determined under a writ of certiorari standard regardless of the form of the
4 approving authority. The court shall give deference to the decision of the approving authority
5 in interpreting its ordinances and determining any facts.

6 Section 3. That § 7-8-30 be amended to read:

7 7-8-30. ~~Such~~ An appeal and transcript shall be filed by the auditor by the first day of the next
8 term of circuit court; and shall stand for trial at ~~such~~ the next term.

9 ~~All appeals thus~~ Each appeal taken to the circuit court shall be docketed as other causes
10 pending ~~therein and the same~~ in circuit court. Each cause shall be heard and determined de
11 novo, except a conditional use permit determination under chapter 11-2. An appeal for
12 conditional use permit determination shall be governed pursuant to section 1 of this Act.

13 Section 4. That the chapter 9-1 be amended by adding a NEW SECTION to read:

14 An appeal and transcript shall be filed by the finance officer by the first day of the next term
15 of circuit court and shall stand for trial at the next term.

16 Each appeal taken to the circuit court shall be docketed as other causes pending in circuit
17 court. Each cause shall be heard and determined de novo, except a conditional use permit
18 determination under chapter 11-4. An appeal for conditional use permit determination shall be
19 governed pursuant to section 2 of this Act.