



2023 South Dakota Legislature

House Bill 1072

HOUSE ENGROSSED

Introduced by: **Representative Chaffee**

1 **An Act to subject lithium to severance tax.**

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

3 **Section 1. That § 10-39A-8 be AMENDED:**

4 **10-39A-8.** All taxes, interest and penalties imposed and collected by the secretary
5 under this chapter shall be distributed as follows:

6 (1) One-half shall be returned to the county in which the energy minerals, lithium, or
7 mineral products were severed; and

8 (2) One-half share shall be paid into the state treasury and credited to the general
9 fund.

10 **Section 2. That chapter 10-39A be amended with a NEW SECTION:**

11 The taxable value of severed and saved lithium is the sales price per pound of the
12 content of lithium contained in the severed and saved lithium ore, regardless of the form
13 in which the product is actually disposed of. However, if the severed and saved lithium
14 ore is not sold, the taxable value is the market value of the lithium in such material.

15 **Section 3. That § 10-39A-3.1 be AMENDED:**

16 **10-39A-3.1.** An energy mineral ~~is~~ and lithium are subject to the severance tax
17 when it is sold or consumed, whichever occurs first.

18 **Section 4. That § 10-39A-4 be AMENDED:**

19 **10-39A-4.** Each owner of interests in energy minerals or lithium produced from a
20 single well or mine shall designate an operator to file all required returns and to pay the
21 tax due under this chapter. The tax, subject to any provisions to the contrary in any
22 written contract, lease, or other form of agreement, shall be withheld from distributions

1 that would otherwise be made to each owner by the operator for payment to the state. If
2 any owner of interests in energy minerals or lithium produced from a single well or mine
3 fails to designate such an operator, then the person designated as operator by the owner
4 of the working interest in the well or mine, or, if no such person has been designated,
5 then the person holding the greatest portion of the working interest in such well or mine,
6 is the designated operator for purposes of this section.

7 **Section 5. That § 10-39A-5 be AMENDED:**

8 **10-39A-5.** Within thirty days after the close of each quarter ending respectively
9 on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each
10 year, each owner of severed energy minerals or lithium, or person designated to remit the
11 tax on behalf of the owners shall file with the secretary of revenue under oath a report of
12 the amount of energy minerals and lithium which became subject to the severance tax in
13 the previous quarter and the amount of tax due under the provisions of this chapter and
14 shall remit with such report the amount of tax thereof shown to be due. Any report made
15 shall be on forms and in accordance with rules promulgated by the secretary of revenue
16 pursuant to chapter 1-26. A violation of this section is a Class 1 misdemeanor.

17 **Section 6. That § 10-39B-2 be AMENDED:**

18 **10-39B-2.** There is imposed on the severance of energy minerals and lithium in
19 this state an excise tax, to be known as a conservation tax, equal to two and four-tenths
20 mills of the taxable value of any energy minerals or lithium severed and saved. The tax
21 shall be paid by the operator as defined in subdivision 10-39A-1.1(3). An operator may
22 not pass the tax on to the owner of the energy minerals or lithium. The tax provided for
23 in this chapter shall be placed in the environment and natural resources fee fund
24 established pursuant to § 1-41-23 and collected in accordance with chapter 10-59. The
25 tax collected from the production of oil or gas may be used to carry out the duties as set
26 forth in chapter 45-9. The tax collected from the production of coal or uranium may be
27 used to carry out the duties as set forth in chapters 45-6B and 45-6D. The tax collected
28 from the production of lithium may be used to carry out the duties set forth in chapter 45-
29 6B.