

2023 South Dakota Legislature

House Bill 1072**AMENDMENT 1072E
FOR THE HOUSE TAXATION ENGROSSED BILL**

1 An Act to ~~include lithium as an energy mineral subject~~subject lithium to severance
2 tax ~~and set the distribution of proceeds therefrom.~~

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

4 ~~Section 1. That § 10-39A-1.1 be AMENDED:~~

5 ~~10-39A-1.1. Terms used in this chapter mean:~~

6 (1) ~~"Energy minerals," any mineral fuel including coal, lignite, petroleum, oil, natural gas,~~
7 ~~uranium, lithium, and thorium and any combination of minerals used in the production of~~
8 ~~energy;~~

9 (2) ~~"Market value," the price at which the property would change hands between a willing~~
10 ~~buyer and willing seller, neither being under any compulsion to buy or sell and both having~~
11 ~~reasonable knowledge of the facts;~~

12 (3) ~~"Operator," a person who directly or physically severs minerals from the land;~~

13 (4) ~~"Owner of interest" or "owner," an owner of a landowner's royalty, of an overriding royalty,~~
14 ~~or of profits and working interests, or any combination thereof. The term does not include an~~
15 ~~owner of federal, state, or local governmental royalty interest;~~

16 (5) ~~"Sale price," the total consideration received in exchange for energy minerals;~~

17 (6) ~~"Secretary," the secretary of the South Dakota Department of Revenue;~~

18 (7) ~~"Severing," the mining, extracting, or producing of any energy minerals in South Dakota;~~

19 (8) ~~"Severor," a person engaging in the business of severing energy minerals that the person~~
20 ~~owns or a person who is the owner of energy minerals and has another person performing~~

1 ~~the severing of such energy minerals, except that the, This term does not include the State~~
2 ~~of South Dakota or its political subdivisions.~~

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

4 **10-39A-8.** All ~~Except as provided in section 3 of this Act, all~~ taxes, interest and
5 penalties imposed and collected by the secretary under this chapter shall be distributed
6 as follows:

- 7 (1) One-half shall be returned to the county in which the energy minerals, lithium, or
8 mineral products were severed; and
9 (2) One-half share shall be paid into the state treasury and credited to the general
10 fund.

11 ~~**Section 3. That chapter 10-39A be amended with a NEW SECTION:**~~

12 ~~All taxes, interest, and penalties imposed on the taxable value of lithium and collected by the~~
13 ~~secretary under this chapter, must be distributed as follows:~~

14 ~~(1) Eighty percent to the county in which the lithium-bearing material or material products~~
15 ~~were severed; and~~

16 ~~(2) Twenty percent to the state treasury and credited to the general fund.~~

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

18 The taxable value of severed and saved lithium ~~bearing material~~ is the sales price
19 per pound of the content of lithium contained in the severed and saved lithium ore,
20 regardless of the form in which the product is actually disposed of. However, if the severed
21 and saved lithium ore is not sold, the taxable value is the market value of the lithium in
22 such material.

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

24 **10-39A-3.1.** An energy mineral ~~is~~ and lithium are subject to the severance tax
25 when it is sold or consumed, whichever occurs first.

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

1 **10-39A-4.** Each owner of interests in energy minerals or lithium produced from a
2 single well or mine shall designate an operator to file all required returns and to pay the
3 tax due under this chapter. The tax, subject to any provisions to the contrary in any
4 written contract, lease, or other form of agreement, shall be withheld from distributions
5 that would otherwise be made to each owner by the operator for payment to the state. If
6 any owner of interests in energy minerals or lithium produced from a single well or mine
7 fails to designate such an operator, then the person designated as operator by the owner
8 of the working interest in the well or mine, or, if no such person has been designated,
9 then the person holding the greatest portion of the working interest in such well or mine,
10 is the designated operator for purposes of this section.

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

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

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

22 **10-39B-2.** There is imposed on the severance of energy minerals and lithium in
23 this state an excise tax, to be known as a conservation tax, equal to two and four-tenths
24 mills of the taxable value of any energy minerals or lithium severed and saved. The tax
25 shall be paid by the operator as defined in subdivision 10-39A-1.1(3). An operator may
26 not pass the tax on to the owner of the energy minerals or lithium. The tax provided for
27 in this chapter shall be placed in the environment and natural resources fee fund
28 established pursuant to § 1-41-23 and collected in accordance with chapter 10-59. The
29 tax collected from the production of oil or gas may be used to carry out the duties as set
30 forth in chapter 45-9. The tax collected from the production of coal or uranium may be
31 used to carry out the duties as set forth in chapters 45-6B and 45-6D. The tax collected
32 from the production of lithium may be used to carry out the duties set forth in chapter 45-
33 6B.