

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. \_\_\_\_\_

Natural gas valuation.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation and revenue; providing for the  
2 valuation of certain natural gas for taxation purposes;  
3 providing definitions; amending related provisions;  
4 providing reporting requirements; specifying applicability;  
5 and providing for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 39-14-201(a) by creating new  
10 paragraphs (xxxiii) through (xxxvi) and  
11 39-14-203(b)(vi)(D)(intro) and by creating a new  
12 subparagraph (E) are amended to read:

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14 **39-14-201. Definitions.**

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2 (a) As used in this article:

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4 (xxxiii) For the purposes of W.S.  
5 39-14-203(b)(vi)(E), "rate of return" means the weighted  
6 average cost of capital (hereafter referred to as the  
7 "capitalization rate") as calculated under this paragraph  
8 for the ten (10) largest natural gas producers in this  
9 state on a production volume basis during the preceding  
10 production year for which the appropriate data is publicly  
11 available (hereafter referred to as the "representative  
12 companies"). The following shall apply:

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14 (A) The capitalization rate is any rate  
15 used to convert an income stream into a present worth of  
16 future benefits. The rate reflects the relationship  
17 between one (1) year's income or an annual average of  
18 several years' income and the corresponding value. The  
19 department shall annually calculate the capitalization rate  
20 based upon the band of investment method as defined by this  
21 paragraph. The primary components of the capitalization  
22 rate shall include capital structure and cost of capital  
23 (debt, preferred and equity capital) as developed in  
24 appropriate money markets for the representative companies;

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(B) "Band of investment method" means that the capitalization rate is equal to the weighted average cost of the debt and equity portions of the capital investment. The following shall apply:

(I) Proper development and application of the band of investment shall require obtaining and analyzing data for the percent of debt and equity which makes up the capital structure as determined from published financial sources such as Moody's bond record, Moody's bond survey, Value Line, Moody's public utility or transportation manuals, regulatory reports or other recognized financial materials. The determination shall be done by the corporate bonds' rating of the representative companies or other means if bond ratings are not available;

(II) Debt rate estimates used in the band of investment method shall reflect the average current cost of yield to maturity of outstanding issues of debt financing for the year ending closest to the date of the calculation of the capitalization rate required by this paragraph. The rates shall be taken from published financial sources such as Moody's public utility news

1 reports or other recognized financial materials. The  
2 determination shall be done by corporate bond rating of the  
3 representative companies;

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5 (III) Preferred rate estimates used in  
6 the band of investment method shall reflect the average  
7 current cost of market yield of outstanding issues of  
8 preferred stock financing for the year ending closest to  
9 the date of the calculation of the capitalization rate  
10 required by this paragraph. The rates shall be taken from  
11 published financial sources such as Moody's public utility  
12 news reports or other recognized financial materials. The  
13 determination shall be done by corporate bond rating of the  
14 representative companies;

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16 (IV) The current cost of equity shall  
17 be based on data from the capital markets of the  
18 representative companies. Equity rates shall reflect the  
19 representative cost of equity financing for the  
20 representative companies by corporate bond rating as of the  
21 date of the calculation of the capitalization rate under  
22 this paragraph. The current cost of equity shall be  
23 developed by accepted models in the appraisal and financial  
24 communities. These models shall include, but are not

1 limited to, equity risk premium, capital asset pricing  
2 model and the discounted cash flow model. The sources of  
3 required data shall be taken from published financial  
4 sources such as Value line, Ibbotson associates, Wall  
5 Street Journal, regulatory filings and other recognized  
6 financial materials. Not later than March 15 of each year,  
7 the department shall conduct a public meeting for  
8 presentation of the capitalization rate to be used to value  
9 production in the same calendar year in which the rate is  
10 determined. Notice of the date and time of the meeting  
11 shall be provided to all interested parties at least thirty  
12 (30) days prior to the meeting. Interested parties may  
13 present written or oral comments on the proposed  
14 capitalization rate or within five (5) business days  
15 thereafter. A final determination of the capitalization  
16 rate shall be made available on or before March 31 or as  
17 soon thereafter as possible;

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19 (V) Within thirty (30) days of the  
20 final capitalization rate determination under this  
21 paragraph, the taxpayer shall file amended returns and  
22 remit any severance tax due for that portion of the year  
23 for which the capitalization rate had yet to be determined

1 and no interest or penalty shall be due as a result of the  
2 application of the new capitalization rate.

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4 (xxxiv) For the purposes of W.S.  
5 39-14-203(b)(vi)(E), "return on investment" means the  
6 product of the rate of return multiplied by the gross  
7 capital investment in all processing and transportation  
8 facilities used by the taxpayer to process or transport  
9 natural gas from the point of valuation to the point of  
10 arms-length sale as maintained on the taxpayer's books and  
11 records under generally accepted accounting principles;

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13 (xxxv) For the purposes of W.S.  
14 39-14-203(b)(vi)(E), "total direct processing and  
15 transportation costs" means all costs incurred by the  
16 taxpayer to operate all processing or transportation  
17 facilities from the point of valuation to the point of  
18 arms-length sale as maintained on the taxpayer's books and  
19 records. The costs shall include salaries and benefits;  
20 contract labor; repairs and maintenance including  
21 processing facility turnarounds; fuel, power and utilities;  
22 chemicals; processing facility premise lease costs to  
23 nonaffiliated parties; waste water treatment; disposal of  
24 byproduct and waste products; safety; costs of

environmental permitting and monitoring, federal and state  
environmental compliance fees and costs, excluding  
compensatory and punitive damages and governmental  
penalties; laboratory; distributive control system; and ad  
valorem taxes on real and tangible personal property  
excluding the gross products tax. The taxpayer shall be  
entitled to its proportionate share of the total direct  
processing and transportation costs as measured by its  
percentage of inlet volumes;

(xxxvi) For the purposes of paragraph (xxxiv) of  
this subsection, "gross capital investment" means the total  
gross capitalized investment in the processing and  
transportation facilities from the point of valuation to  
the point of arms-length sale as maintained on the  
taxpayer's books and records under generally accepted  
accounting principles. The gross capital investment shall  
be calculated based on the company's books and records as  
of January 1 plus December 31 of the production year,  
divided by two (2). For purposes of this paragraph, gross  
capital investment shall not include any investment in  
equipment that is considered permanently abandoned under  
generally accepted accounting principles. Gross capital  
investment shall include items which are not in continuous

1 operation if they remain on the company's books and records  
2 under generally accepted accounting principles.

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4 **39-14-203. Imposition.**

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6 (b) Basis of tax. The following shall apply:

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8 (vi) In the event the crude oil, lease  
9 condensate or natural gas production as provided by  
10 paragraphs (iii) and (iv) of this subsection is not sold at  
11 or prior to the point of valuation by bona fide arms-length  
12 sale, or, except as otherwise provided, if the production  
13 is used without sale, the department shall identify the  
14 method it intends to apply under this paragraph to  
15 determine the fair market value and notify the taxpayer of  
16 that method on or before September 1 of the year preceding  
17 the year for which the method shall be employed. The  
18 department shall determine the fair market value by  
19 application of one (1) of the following methods:

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21 (D) Proportionate profits - The  
22 proportionate profits method shall only be used as a method  
23 in conjunction with the provisions of the modified netback



1 method in subparagraph (E) of this paragraph. The fair  
2 market value is:

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4 (E) Modified netback - The fair market  
5 value is:

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7 (I) The total amount received from the  
8 sale of the natural gas minus the total direct processing  
9 and transportation costs, any arms-length transportation  
10 fees from the point of valuation to the point of arms-  
11 length sale, overhead costs directly related to facility  
12 operations not to exceed ten percent (10%) of the total  
13 direct processing and transportation costs, exempt  
14 royalties and return on investment incurred by the taxpayer  
15 from the point of valuation to the point of arms-length  
16 sale;

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18 (II) There shall be one (1) point of  
19 valuation for all interest owners of the processing  
20 facility;

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22 (III) Any producer utilizing the  
23 modified netback method set forth in this subparagraph  
24 shall be required to calculate the taxable value for the

tax year under the methods of both this subparagraph and subparagraph (D) of this paragraph (hereafter referred to as the "annual floor test"). The taxable value for the year shall be the higher of the two (2) taxable values determined under the annual floor test. If the valuation method is changed as a result of the provision in this subparagraph, no interest or penalties shall be due if the taxpayer files the amended returns and remits the additional severance tax due under this subparagraph not later than May 25 of that calendar year. After the first year of applicability of this subparagraph, for each succeeding year the taxpayer's monthly severance tax returns shall be filed using the valuation method determined under the annual floor test for the immediately preceding calendar year.

## **Section 2.**

(a) The department shall report to the governor and the joint revenue interim committee on the results of applying the modified netback valuation method as provided by this act. The report shall be submitted not later than October 1 of each year beginning in 2009 through 2019. The

1 report shall, subject to confidentiality restrictions  
2 imposed by law:

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4 (i) Describe whether producer-processors paid  
5 taxes using the modified netback method or the  
6 proportionate profits method;

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8 (ii) Include a table showing taxable value per  
9 mcf under the modified netback, proportionate profits,  
10 comparable value and any other natural gas valuation  
11 methods employed;

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13 (iii) Present a summary of all proceedings  
14 pending before, or decisions made by, the state board of  
15 equalization or any Wyoming court pertaining to producer-  
16 processed natural gas; and

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18 (iv) Provide a listing of any taxes paid under  
19 protest by a producer-processor, specifying the amounts and  
20 the county or counties involved.

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22 **Section 3.** This act shall apply to all natural gas  
23 production occurring on and after January 1, 2009.

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