

Bill no. 236 Folketinget (Danish Parliament) 1998-99

Submitted on 29 April 1999 by the Minister for Environment and Energy (Svend Auken)

Adopted by Folketinget on 28 May 1999 without amendments  
(Now **Act no. 377 of 2 June 1999**)

## **Bill to Amend the Act on Subsidies for Electricity Production**

(Repeal of subsidies for renewable energy)

### **Section 1**

Act on subsidies for electricity production, cf. Consolidated Act no. 768 of 6 October 1997 shall be amended as follows:

1. Section 1 shall be worded as follows:

"Section 1. Pursuant to the rules of this Act, state subsidies shall be granted for the production of electricity generated by natural gas-based small-scale and industrial CHP production or waste-based CHP production."

2. Sections 2, 3 and 10(2) shall be repealed.

3. In section 3 a(1) and section 4(1) "sections 2, 2 a and 3" shall be amended to "section 2 a".

4. In section 3 d and section 4(2), first sentence, "the electricity supply company" shall be amended to "the grid company", and in section 4(2), second sentence, "The electricity supply companies" shall be amended to "The grid companies".

### **Section 2**

Subsection 1. The Minister for Environment and Energy shall decide the commencement date of the Act.

Subsection 2. The Minister for Environment and Energy may decide that section 1 para 2 shall enter into force prior to the other provisions of the Act with regard to electricity generated by wind turbines.

Subsection 3. The Minister for Environment and Energy may lay down rules governing the calculation of subsidy-entitled and non-subsidy-entitled electricity production if the Act enters into effect between two dates of readings for measuring electricity production.

### **Section 3**

This Act shall not apply to the Faroe Islands and Greenland.

## Notes on the Bill

### General Notes

#### *1. The background to the Bill*

On 3 March 1999 a majority of the parties in the Folketing entered into an agreement on a legislative reform of the electricity sector. The Electricity Reform Agreement establishes the framework for how consumer protection, environmental consideration and security of supply are to be undertaken in a liberalised electricity market. The Agreement is attached as Annex 1 to the Bill on electricity supply, to which reference is made.

This Bill will be submitted together with Bill 234 (Bill on Electricity Supply), Bill 235 (Bill on CO<sub>2</sub> quotas for Electricity Production), Bill 237 (Bill to Amend the Act on the Utilisation of Renewable Energy Sources etc) and Bill 238 (Bill on the Amendment of the Heat Supply Act) with a view to overall implementation of the Agreement on a legislative reform of the electricity sector.

The Agreement on a legislative reform of the electricity sector implies that certain amendments have to be made to the Act on subsidies for electricity production. Please see paragraph 5 of the Agreement on the prioritisation of environmentally sound electricity production and paragraph 9 on taxation and state financial effects as well as the Notes on the Bill on electricity supply and the Bill to amend the Act on the utilisation of renewable energy sources etc.

The electricity production subsidies in their present form are granted to environmentally sound electricity production as compensation for the CO<sub>2</sub> and electricity charges levied. Electricity production subsidies are granted to electricity based on renewable energy, biofuels, natural gas-based small- scale and industrial CHP production and waste-based CHP production.

The basis of the scheme is Act no. 944 of 27 December 1991 on subsidies for electricity production as amended by Act no. 1109 of 21 December 1994 and Act no 1210 of 27 December 1996. The Act is supplemented by the Danish Energy Agency's Executive Order no. 798 of 23 October 1997 on subsidies for electricity production.

Concerning the former parliamentary consideration regarding the principal Act, please see Folketingstidende (the Official Report of Parliamentary Proceedings ) 1991-92 FF columns 1569-1576, 2085-2157, 4343-4390 and 4890, schedule A columns 2123-2132, schedule B columns 313-316, schedule C columns 321-322. Regarding the amending Acts please see Folketingstidende 1994-95 FF pp. 454, 692-696, 1651 and 1942, schedule A pp. 377-380, schedule B p 78, schedule C p 132 and Folketingstidende 1996-97 FF pp. 2232-2240, 2640-2641 and 2973, schedule A pp. 2617-2628, schedule B pp. 177-180 and 268- 270, schedule C p 228.

It appears from the Notes on Act no. 1210 of 27 December 1996 on subsidies for electricity production that any changes of the subsidies for electricity production based on renewable energy or biofuels will be implemented on the basis of a new Bill and, furthermore, that the Government will subject the overall subsidy scheme to revision in the year 2000.

## *2. The contents of the Bill*

It is proposed that the current grant towards operational expenditure of DKK 0.10 and DKK 0.17, respectively, per kWh for electricity production based on renewable energy and biofuels in pursuance of Act on subsidies for electricity production shall not be granted in future. This also applies to the subsidies for industrial CHP based on renewable energy and biofuels.

This change is proposed exclusively as a result of the fact that, on the basis of the Agreement on a legislative reform of the electricity sector, market mechanisms will be phased in gradually for trade in renewable energy. The costs of supporting renewable energy will be financed through electricity prices, cf. Bill on electricity supply and Bill to amend the Act on the utilisation of renewable energy sources etc.

Subsidies for electricity production from natural gas-based small-scale and industrial CHP as well as waste-based CHP production will continue unchanged with the rates and principles for the grant which appear from Consolidated Act no. 768 of 6 October 1997 on subsidies for electricity production.

## *3. Economic and administrative consequences for the State*

The Bill implies adjustment of the electricity production subsidies. The adjustment implies that, in future, no subsidies will be granted to electricity generated by renewable energy and biofuels. Subsidies for electricity generated by natural gas-based small-scale and industrial CHP production and waste-based CHP production will continue unchanged.

The change of the electricity production subsidies for electricity generated by renewable energy and biofuels to a surcharge is estimated to entail a state financial improvement for the years 2000-2002 of DKK 1040, 1210 and 1340 million, respectively.

The Bill is deemed to have no consequences for the administration of the scheme.

## *4. Economic and administrative consequences for counties and municipalities*

The amendment to the Act is deemed to have no economic and administrative consequences for counties and municipalities.

## *5. Economic and administrative consequences for the business community*

It is not possible to assess the consequences of the proposed amendment to the Act for the business community in isolation as there is a close connection between the abolition of subsidies for renewable energy and the new rules on the prioritisation of environmentally sound electricity production. Please see the Notes on the Electricity Supply Bill.

## *6. Environmental consequences*

This Bill is deemed to have no environmental consequences when considered together with the other Bills which have been submitted with a view to an overall implementation of the Agreement on a legislative reform of the electricity sector.

### *7. Relation to EU law*

The European Commission has approved the existing law on subsidies for electricity production under the state aid rules of the EC Treaty. The abolition of the electricity production subsidies for renewable energy does not imply per se that the Bill is required to be notified to the European Commission.

Due to the connection between the abolition of the electricity production subsidies for renewable energy and the settlement rules governing prioritised electricity, the Bill will, however, be notified together with the Bill to amend the Act on the utilisation of renewable energy sources etc and the Bill on electricity supply. The Commission's approval is required before the Acts can enter into force.

### *8. Hearing*

On 9 April 1999 the Bill was sent to the following for hearing: the Association of Danish Electricity Utilities, Elsam, Elkraft, Eltra, ELKRAFT System, the Danish Association of District Heating Plants, the Association of Danish CHP Plants, the National Gas Company of Denmark, KOMGAS, the National Association of Local Authorities in Denmark, the City of Copenhagen, the Municipality of Frederiksberg, the Association of County Councils in Denmark, the Confederation of Danish Industries, CO Metal, the Danish Confederation of Trade Unions, the General Workers' Union in Denmark, the Economic Council of the Labour Movement, the Chamber of Commerce, Danish Commerce and Services, the Danish Federation of Small and Medium-sized Enterprises, the Consumer Council, the Agricultural Council of Denmark, the Energy-Environment Council, the Electricity Saving Fund, the Danish Wind Turbine Association, the Waste Technical Co-operation, Reno Sam, the Wind Turbine Industry, the Organisation for Renewable Energy, the Danish Association of Commercial Gardeners, the Danish Association of Consulting Engineers, the Danish Association for the Conservation of Nature, Greenpeace Denmark, OOA, the Industry Association for Biogas, c/o the Danish Farmers' Union, WHF, the Danish Farmers' Union, the Federation of Energy and Environmental Offices, the Wind Energy Council, the Solar Energy Council, the Solid Fuel Group, the Biogas Group, the Association of Heat Pump Manufacturers, the Wave Power Association, the Danish Solar Cell Group, the Prime Minister's office, the Ministry of Finance, the Ministry of Economic Affairs, the Ministry of Taxation, the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Housing and Urban Affairs, the Ministry of Business and Industry, the Ministry of Food, Agriculture and Fisheries, the Ministry of Research and Information Technology, the Electricity Price Committee and the Gas and Heat Price Committee, the Energy Complaints Council, the National Planning Department of the Ministry of Environment and Energy, the Danish Environmental Protection Agency and the National Forest and Nature Agency.

Indukraft, Elfor, NESAs and Sjællandske Kraftværker (Zealand Power Plants) have subsequently expressed a wish to reply to the hearing. Furthermore, LR Energy, Tjæreborg Industry A/S and Vølund Energy Systems A/S have been heard.

At the time of the submission of the Bill, the hearing had not been concluded.

### Evaluation of the consequences of the Bill

	Positive consequences/ fewer expenses	Negative consequences extra expenses
Economic consequences for the State, municipalities and counties	It is deemed that the reduction in state RE subsidies will imply a state financial improvement in the years 2000-2002 of DKK 1040, 1210 , and 1340 million respectively.	No
Administrative consequences for the State, municipalities and counties	No	No
Economic consequences for the business community	Please see the evaluation in the Bill on electricity supply	Please see the evaluation in the Bill on electricity supply
Administrative consequences for the business community	Please see the evaluation in the Bill on electricity supply	Please see the evaluation in the Bill on electricity supply
Environmental consequences	No	No
Administrative consequences for citizens	No	No
Relation to EU law	Together with the Bill to amend the Act on the utilisation of renewable energy sources etc and the Bill on electricity supply, this Bill will be notified to the European Commission pursuant to the state aid rules of the EC Treaty.	

## Notes on individual provisions of the Bill

### On section 11

#### *On para 1*

As a result of the proposed amendment to section 1, no subsidies will be granted in future to the production of electricity generated by renewable energy and biofuels on the basis of Act on subsidies for electricity production. It is underlined that the subsidy scheme will only comprise natural gas-based small-scale and industrial CHP production and waste-based CHP production.

#### *On para 2*

It appears from the Agreement on a legislative reform of the electricity sector that electricity production subsidies for renewable energy (DKK 0.10 and 0.17) are to be abolished and that the costs of the support of renewable energy are to be financed through the electricity price instead.

Against this background it is proposed that sections 2, 3 and 10(2) of Act on subsidies for electricity production should be repealed. Pursuant to section 2 of the existing Act, a subsidy of DKK 0.10 per kWh is granted for electricity generated by renewable energy or biofuels. Section 3 of present legislation empowers the Minister for Environment and Energy to grant, in addition to the subsidy laid down in section 2, a subsidy of DKK 0.17 per kWh for electricity generated by renewable energy or biofuels. Rules on the subsidy of DKK 0.17 are laid down in the Danish Energy Agency's Executive Order no. 789 of 23 October 1997 on subsidies for electricity production.

As a consequence of the repeal of section 2 and section 3, section 10(2) will have to be repealed.

#### *On para 3*

The proposed amendments to section 3 a and section 4 are a consequence of the proposal to repeal section 2 and section 3.

#### *On para 4*

Against the background of the Agreement on a reform of the electricity sector, new company regulation will be implemented which is to ensure the unbundling of monopoly and competition areas. This implies that it is necessary to change the provisions of the existing Act on subsidies for electricity production which mention electricity supply companies.

It appears from the existing Act on subsidies for electricity production that subsidies are granted under the Act for electricity which is settled with an electricity supply company, cf. section 3 d, and that the subsidies are disbursed by the electricity supply company which the electricity is settled with, cf. section 4(2) first sentence. Finally, it appears that the electricity supply companies may set off subsidies disbursed pursuant to section 4(2) second sentence.

In future, electricity will be required settled with a grid company, cf. Part 4 of the Bill on electricity supply. The proposed amendments to section 3 d and section 4(2) first sentence and second sentence are a consequence of this.

**On section 2**

The amendments proposed under section 1 concerning subsidies for electricity production may not enter into force until they have been approved by the European Commission following notification under the state aid rules of the EC Treaty. It is, therefore, proposed that the Minister for Environment and Energy should be authorised to decide the commencement date of the Act.

It is proposed in subsection 2 that the Minister for Environment and Energy should be authorised to decide an earlier commencement date of the abolition of the subsidies for electricity generated by wind turbines. Subsidies for electricity generated by other renewable energy sources or biofuels, cf. section 1 para 2 will not be abolished until the Act comes into effect, cf. section 2(1).

The proposal to let the abolition of the subsidies for electricity generated by wind turbines enter into effect before the abolition of the subsidies for electricity generated by other renewable energy sources or biofuels should be seen in connection with the Bill to amend the Act on the utilisation of renewable energy sources etc. To the extent that electricity production from wind turbines has received subsidies so far, pursuant to the Act on subsidies for electricity production, a higher settlement price will be established.

It is proposed in subsection 3 that the Minister for Environment and Energy should be authorised to prescribe rules for the calculation of subsidy-entitled and non- subsidy-entitled electricity production if the Act comes into effect between two dates of readings for measuring electricity production. The reason is that there may be cases where the reading of one period's production comprises both subsidy-entitled and non-subsidy-entitled electricity production. This may occur where, for example, electricity from a wind turbine is measured and settled once a quarter. If the abolition of subsidies for electricity generated by wind turbines, cf. section 2(2) comes into force on 1 July 1999, the quarterly reading of 31 August 1999 will comprise both subsidy-entitled and non-subsidy-entitled production.

Pursuant to subsection 3, the Minister for Environment and Energy may, for example, lay down rules to the effect that an extra reading of the meter is to be conducted on the date of the entering into force of the relevant provision or that a proportional distribution of the production is to be made.

## **Annex**

### *The Bill compared with current legislation*

#### *Current wording*

**1.** Pursuant to the rules of this Act, state subsidies shall be granted for the production of electricity generated by renewable energy, renewable fuels or natural gas-based small- scale and industrial CHP production.

**2.** A subsidy of DKK 0.10 per kWh shall be granted to electricity producers for the volume of electricity generated by renewable energy or biofuels.

(2) The Minister for Environment and Energy may specify rules for granting the subsidy.

**3.** The Minister for Environment and Energy shall be authorised to grant, in addition to the subsidy laid down in section 2, a subsidy of DKK 0.17 per kWh to electricity producers for the volume of electricity generated by renewable energy or biofuels.

(2) The Minister for Environment and Energy may specify rules for granting the subsidy pursuant to subsection 1.

#### *The Bill*

##### *Section 1*

Act on subsidies for electricity production, cf. Consolidated Act no.768 of 6 October 1997 shall be amended as follows:

**1.** Section 1 shall be worded as follows:

"1. Pursuant to the rules of this Act state subsidies shall be granted for the production of electricity generated by natural gas-based small-scale and industrial CHP production or waste-based CHP production."

**2.** Sections 2, 3 and 10(2) shall be repealed.

**10.** The Minister for Taxation shall decide the commencement date of the Act.

(2) Pursuant to section 2 and section 3 of the Act, subsidies shall be granted for supplies of electricity to the electricity supply grid from the commencement date of the Act.

**3 a.** For electricity generated by industrial CHP production, the granting of subsidies shall, pursuant to sections 2, 2 a and 3, be limited to a period of 6 years from the commencement of operation of the individual plant, cf. however subsections 2 and 3.

(2)...

(3)...

(4)...

**4.** The administration concerning the disbursements of subsidies pursuant to sections 2, 2 a and 3 shall be undertaken by the state customs and tax authorities.

(2)...

(3)...

**3 d.** Subsidies under the Act shall be granted to the electricity producer concerned for electricity settled with the electricity supply company.

**4.** The administration concerning the disbursements of subsidies pursuant to sections 2, 2 a and 3 shall be undertaken by the state customs and tax authorities.

**3.** In section 3 a(1) and section 4(1) "sections 2,2 a and 3" shall be amended to "section 2 a".

**4.** In section 3 d and section 4(2) first sentence "the electricity supply company" shall be amended to "the grid company", and in section 4(2) second sentence "The electricity supply companies" shall be amended to "The grid companies".

(2) Subsidies shall, as mentioned in subsection 1, be disbursed by the electricity supply company which the electricity is settled with. The electricity supply companies shall set off subsidies disbursed in the charges for which they are liable to the state customs and tax authorities pursuant to Act on electricity charges, Act on carbon dioxide charges on certain energy products and section 34(4-6) of Act on sulphur charge.

(3)...

## **Section 2**

Subsection 1. The Minister for Environment and Energy shall decide the commencement date of the Act.