

Bill no. 237 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 with amendments (see Annex 2)

(Now **Act no 378 of 2 June 1999**)

Bill to Amend the Act on the Utilisation of Renewable Energy Sources etc.

(Change of the settling price for wind energy plants and the like)

Section 1

Act on the utilisation of renewable energy sources etc, cf. Consolidated Act no. 837 of 7 October 1992 as amended by Act no. 1089 of 20 December 1995 and Act no. 427 of 10 June 1997 shall be amended as follows:

1. Section 6(2) second sentence shall be repealed.

2. Section 10 shall be worded as follows:

"The Minister for Environment and Energy may specify rules governing the implementation and administration of this Part, including the delimitation of the work and the calculation of the expenses for which subsidies may be granted, the form and contents of applications, time limits, conditions for subsidies, notification of promise of subsidies, change of notified promise, lapse of notified promise, disbursement of subsidies, repayment of subsidies and interest accrued, accounts, audits and reports as well as supervision and control.

Subsection 2. The Minister for Environment and Energy may demand that subsidies be paid into a bank account.

Subsection 3. The Minister for Environment and Energy may commit himself to subsidies exceeding the fiscal year. Subject to the Environment and Energy Minister's decision, subsidies may be paid in advance or on account."

3. Section 10 c shall be worded as follows:

"Electricity supplied from a wind energy plant to the electricity grid shall be settled with 85 % of the sales price to ordinary consumers with annual electricity consumption of 20,000 kWh calculated exclusive of charges and surcharge with the electricity supply company in whose supply area the wind energy plant is placed. In addition, a surcharge of DKK 0.27 per kWh shall be granted.

Subsection 2. Wind energy plants owned by electricity supply companies shall, however, receive a surcharge of DKK 0.10 per kWh only. If an electricity supply company owns part of a wind energy plant, the electricity supply company shall receive DKK 0.10 per kWh for the share owned by the electricity supply company.

Subsection 3. The Minister for Environment and Energy may specify rules governing the price settlement

for electricity supplied from wind energy plants to the electricity grid."

4. Section 11 a shall be repealed and replaced by the following:

"Any person who receives subsidies under this Act shall be obliged, at the request of the Minister for Environment and Energy, to submit any information of significance for the granting of promise and disbursement of subsidies and for the Environment and Energy Minister's supervision of compliance with the conditions prescribed.

Subsection 2. The Minister for Environment and Energy or persons authorised by the Minister thereto shall at any time, on proof of identity, have right of entry to inspect the subsidised activities, to inspect accounts material and to establish the presence of assets and the implementation of the activities.

Section 11 b.

Unless more severe punishment is otherwise provided by law, any person who submits wrongful or misleading information in connection with an application for promise or for disbursement of subsidies or omits to submit information shall, pursuant to section 11 a(1), be punishable by fine or simple detention.

Subsection 2. In rules issued in pursuance of this Act, punishment by fine may be laid down for violation of the rules or orders under the rules.

Subsection 3. Companies and the like (legal persons) may, pursuant to the rules laid down in Chapter 5 of the Criminal Code, be liable to punishment."

Section 2

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

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 supply security are to be undertaken in a liberalised electricity market. The Agreement is attached as Annex 1 to Bill 234 (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 CO₂ Quotas for Electricity Production), Bill 236 (Bill on the Amendment of the Act on Subsidies for Electricity Production) and Bill 238 (Bill on the Act to Amend the Heat Supply Act), with a view to overall implementation of the Electricity Reform Agreement.

The Electricity Reform Agreement implies that certain amendments are to be made to the Act on the utilisation of renewable energy sources etc.

2. The contents of the Bill

2.1 Amendments against the background of the Agreement on a legislative reform of the electricity sector

The Electricity Reform Agreement implies that the subsidies for electricity generated by renewable energy (RE) or biofuels granted so far in pursuance of Act on subsidies for electricity production, cf. Consolidated Act no. 768 of 6 October 1997 will be changed to a market-based scheme. Electricity production subsidies will be replaced by RE certificates which constitute a surcharge for the RE producer. This change of the electricity production subsidies is to contribute to reaching the DKK 2 billion annual revenue for the Government, in 1999 DKK 1.3 billion, as assumed in the agreement on the Budget for the year 2000.

The new Act on electricity supply, which establishes, inter alia, the new market-based scheme in the RE area, is expected to come into effect at the turn of the year 1999/2000 at the earliest after comprehensive planning, including submission to the European Commission.

Against this background, this Bill proposes the implementation of a temporary scheme, which implies that the electricity production subsidy for wind energy will be financed through the electricity prices. The current electricity production subsidy is DKK 0.10 per kWh for all wind energy plants and another DKK 0.17 per kWh for wind energy plants which are not owned by the electricity utilities. The intention is that the temporary scheme is to come into effect immediately after the Folketing's passing of the Act and the European Commission's approval, cf. point 7, for it to have a revenue-generating impact for 1999. If the Act enters into force on 1 July 1999, the Government revenue will total approximately DKK 380 million in 1999.

This temporary scheme comprises exclusively the electricity production subsidy for wind energy, which

constitutes by far the most significant part of the electricity production subsidy for electricity generated by RE plants. Other RE producers will have the electricity production subsidy paid according to the existing rules laid down in Act on subsidies for electricity production until the new electricity supply Act comes into force.

The scheme laid down in section 10 c will be repealed when the new electricity supply Act comes into force. Simultaneously, the other rules laid down in Part 2 of the Act governing approval and connection of wind energy plants etc will be repealed as these provisions will be carried on in the new electricity supply Act.

2.2 Amendments against the background of the recommendations of the Ministry of Finance report "Administration of subsidies"

The Bill contains, furthermore, some technical amendments as a result of the Finance Ministry's request that guidelines and recommendations in the report "Administration of subsidies" (Finance Ministry, May 1996) also when amending existing subsidy Acts should, to maximum extent, be incorporated in substantive law with a view to avoiding any doubt concerning the question of authority when issuing Executive Orders.

Therefore, the Bill contains a number of specifications of the provisions on the Minister's opportunity to lay down rules governing the implementation and administration of the subsidies Act. It is, inter alia, specified that the Minister has authority to lay down rules governing the form and contents of applications, time limits, repayment of subsidies and interest accrued as well as inspection and control.

Furthermore, it is made explicit in the Act that the Minister may commit himself to promises exceeding the fiscal year. Similarly, it is made explicit that demands may be made for subsidies to be paid into a bank account and that the subsidies may be paid in advance or on account.

The Bill makes explicit the applicant's obligation to provide all information relevant for the subsidy. Similarly, it establishes that the Minister or a person authorised by the Minister is required to have right of entry to inspect the subsidised activities, inspect accounts material and establish the presence of assets and the implementation of activities.

Finally, it is proposed that submission of misleading information and omission to provide obligatory information for the purpose of supervising compliance with the promise and disbursement terms should be added to the criminal provision of the Act.

3. Economic and administrative consequences for the State

If the Act enters into force on 1 July 1999, the change from electricity production subsidies to a surcharge will imply a revenue of approximately DKK 380 million in 1999.

The Bill is not deemed to imply any administrative consequences for the State.

4. Economic and administrative consequences for municipalities and counties

The Bill is not deemed to imply any economic and administrative consequences for municipalities and counties.

5. Economic and administrative consequences for the business community

As mentioned under the economic consequences, this Bill implies economies for the State. This revenue will be achieved through the electricity price. The impact on the electricity price will, however, be smaller than assumed in the Budget agreement and the political Agreement on the Electricity Reform.

The Bill is not deemed to imply any administrative consequences for the business community.

6. Environmental consequences

The Bill is not deemed to imply any environmental consequences.

7. Relation to EU law

The Bill implies changes of an already approved state aid scheme. These changes must be notified to the European Commission under the state aid rules of the EC Treaty.

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, NESÅ and Sjællandske Kraftværker (Zealand Power Plants) have subsequently expressed a wish to reply to the hearing.

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	If the Act comes into force on 1 July 1999, the change from electricity production subsidies to a surcharge will imply a revenue the State of app. DKK 380 million in 1999	No
Administrative consequences for the State, municipalities and counties	No	No
Economic consequences for the business community	No	As mentioned under the economic consequences, the Bill implies economies for the State. This revenue will derive from the electricity price. The impact will, however be less than assumed in the Budget agreement and the political Agreement on the Electricity Reform
Administrative consequences for the business community	No	No
Environmental consequences	No	No
Administrative Consequences for Citizens	No	No
Relation to EU law	The Bill implies changes of an already approved state aid scheme. These changes must be notified to the European Commission under the state aid rules of the EC Treaty.	

Notes on individual provisions of the Bill

On Section 1

On para 1

It is proposed that the provision be repealed and instead inserted in section 10(3) second sentence of the Act, cf. Notes on section 1 para 2.

On para 2

The provision implies that the powers to lay down rules governing the subsidy scheme in a number of areas which up to now have been seen as covered by the existing Act's broad wording regarding powers are made explicit. It is specified, inter alia, that there is also authority to lay down rules governing the form and contents of applications, time limits, notification of promise of subsidies, change of promise, repayment of subsidies and interest accrued as well as supervision and control. The amendment is a result of Finance Ministry recommendations in the 1996 report on administration of subsidies.

The provision of subsection 2 specifies that demands may be made for subsidies to be paid into the subsidy recipient's bank account. The provision is a result of Finance Ministry recommendations in the report on administration of subsidies.

The provision of subsection 3 specifies that promises of subsidies exceeding the fiscal year may be given and that, subject to the Minister's decision, subsidies may be disbursed in advance or on account. As a consequence of this, it is proposed that the existing provision on disbursement in advance, laid down in section 6(2) second sentence of the Act, be repealed, cf. Notes on section 1 para 1. The provision is a result of Finance Ministry recommendations in the report on administration of subsidies.

On para 3

The provision of section 10 c proposes that the current electricity production subsidy, laid down in section 2 and section 3 of the Act on subsidies for electricity production of DKK 0.10 and DKK 0.17 respectively per kWh, should in future be changes to a surcharge financed through the electricity price. For the specific background to the proposal, please see point 2.1 of the General Notes.

It is proposed in subsection 1 that the present settlement price for privately owned wind energy plants of 85 % of the sales price for ordinary consumers with annual electricity consumption of 20,000 kWh calculated exclusive of charges and a surcharge should continue unchanged. In addition, the electricity from these wind energy plants is to be settled with a surcharge of DKK 0.27 per kWh, corresponding to the current electricity production subsidies.

It is specified in subsection 2 that wind energy plants owned by electricity supply companies will not

receive the surcharge of DKK 0.17 but exclusively the surcharge of DKK 0.10 per kWh as compensation for the former reimbursement of the CO₂ charge of DKK 0.10 imposed per kWh.

Rules which are laid down subject to the authority of section 10 c(3) are, inter alia, to secure the transition from electricity production subsidies to the surcharge.

On para 4

Section 11 a specifies the applicant's obligation to, on request, provide the Minister for Environment and Energy with any information of significance for the granting of promise, disbursement of subsidies and supervision of compliance with the conditions in this connection. The provision makes explicit the applicant's obligation to provide all relevant information in relation to the subsidy. The provision is a result of Finance Ministry recommendations in the 1996 report on administration of subsidies.

It is laid down in subsection 2 that the Minister for Environment and Energy or persons authorised by the Minister thereto at any time, on proof of identity, have right of entry to inspect the subsidised activities, to inspect accounts material and to establish the presence of assets and the implementation of activities. The provision contains no demand for a court order as there is no legal substance for the court to decide on. The provision is a result of Finance Ministry recommendations in the report on administration of subsidies.

Section 11 b specifies the existing criminal provision of section 11 a(2) of the Act. The Bill specifies that also the submission of misleading information and the omission to submit obligatory information for the purpose of supervision of compliance with the promise and disbursement terms are comprised by the criminal provision. The provision is a result of Finance Ministry recommendations in the report on administration of subsidies.

Subsection 2 corresponds to section 11 a(1) of the existing Act.

Subsection 3 corresponds to section 11 a(3) of the existing Act.

On section 2

The amendment proposed under section 1 para 3 is connected with other amendments as a result of the Electricity Reform Agreement of 3 March 1999. Furthermore, the Act is to be notified to the European Commission under the EU state aid rules and may not come into effect before receipt of approval of the Commission. Therefore, it is proposed that the Minister for Environment and Energy decide the commencement date of the Act.

Annex 1

The Bill compared with current legislation

Current wording

6.(1) An application for subsidies shall be forwarded to the Danish Energy Agency.

(2) Against the background of the application a promise of subsidies may be given. Where special circumstances so advocate, subsidies may be disbursed fully or partly in advance. The annual framework of promise of subsidies may be broken down by the subsidy categories of section 1(2).

(3)...

10. The Minister for Environment and Energy shall specify the rules governing the implementation of Part 1 of the Act, including the delimitation of the work and the calculation of the expenses for which subsidies may be granted, disbursement of the subsidies and time limits pursuant to section 7. Rules may be laid down governing the conditions for subsidies, including demands for submission of accounts, audits and reports.

The Bill

Section 1

Act on the utilisation of renewable energy sources etc, cf. Consolidated Act no. 837 of 7 October 1992 as amended by Act no. 1089 of 20 December 1995 and Act no. 427 of 10 June 1997 shall be amended as follows:

1. Section 6(2) second sentence shall be repealed.

2. Section 10 shall be worded as follows:

"The Minister for Environment and Energy may specify rules governing the implementation and administration of Part 1 of the Act, including the delimitation of the work and the calculation of the expenses for which subsidies may be granted, the form and contents of applications, time limits, conditions of subsidies, notification of promise of subsidies, change of notified promise, lapse of notified promise, disbursement of subsidies, repayment of subsidies and interest accrued, accounts, audits and reports as well as supervision and control.

Subsection 2. The Minister for Environment and Energy may demand that subsidies be paid into a bank account.

Subsection 3. The Minister for Environment and Energy may commit himself to subsidies exceeding the fiscal year. Subject to the Environment and Energy Minister's decision, subsidies may be paid in advance or on account."

10 c.(1) Electricity supplied from wind energy plants to the electricity grid shall be settled with 85 % of the sales price for ordinary consumers calculated exclusive of charges and subsidies with the electricity supply company in whose area the wind energy plant is placed.

(2) Pursuant to subsection 1, the Minister for Environment and Energy may specify the rules governing the price settlement for electricity supplied from wind energy plants to the electricity grid.

3. Section 10 c shall be worded as follows:

"Electricity supplied from a wind energy plant to the electricity grid shall be settled with 85 % of the sales price for ordinary consumers with annual consumption of 20,000 kWh calculated exclusive of charges and surcharge with the electricity supply company in whose supply area the wind energy plant is placed. In addition, a surcharge of DKK 0.27 per kWh shall be granted.

Subsection 2. Wind energy plants owned by electricity supply companies shall, however, receive a surcharge of DKK 0.10 per kWh only. If an electricity supply company owns part of a wind energy plant, the electricity supply company shall receive DKK 0.10 per kWh for the share it owns of the electricity supply company.

Subsection 3. The Minister for Environment and Energy may specify rules governing the price settlement for electricity supplied from wind energy plants to the electricity grid."

11 a.(1) In rules issued in pursuance of this Act, punishment by fine may be laid down for violation of the rules or orders under the rules.

(2) Unless more severe punishment is otherwise provided by law, any person who submits wrongful information in connection with an application for promise of subsidies or for disbursement of subsidies shall, pursuant to Part 1, be punishable by fine or simple detention.

(3) Companies and the like (legal persons) may, pursuant to the rules laid down in Chapter 5 of the Criminal Code, be liable to punishment.

4. Section 11 a shall be repealed and replaced by the following:

"Any person who receives subsidies under this Act shall be obliged, at the request of the Minister for Environment and Energy, to submit any information of significance for the granting of promise and disbursement of subsidies and for the Environment and Energy Minister's supervision of compliance with the conditions prescribed.

Subsection 2. The Minister for Environment and

Energy or persons authorised by the Minister thereto shall at any time, on proof of identity, have right of entry to inspect the subsidised activities, to inspect accounts material and to establish the presence of assets and the implementation of the activities.

11 b. Unless more severe punishment is otherwise provided by law, any person who submits wrongful or misleading information in connection with an application for promise or for disbursement of subsidies or omits to submit information shall, pursuant to section 11 a(1) be punishable by fine or simple detention.

Subsection 2. In rules issued in pursuance of this Act punishment by fine may be laid down for violation of the rules or orders under the rules.

Subsection 3. Companies and the like (legal persons) may, pursuant to the rules laid down in Chapter 5 of the Criminal Code, be liable to punishment."

Section 2

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

Annex 2

The following amendments were made during the readings of the Bill in the Folketing:

In section 1

- 1) "and without court order " shall be added after "on proof of identity" in section 11 a (2) proposed under no. 4.
- 2) The following new subsection shall be added after subsection 2 in section 11 a proposed under no. 4:
 - (3) The police force will provide assistance in exercising the powers pursuant to (2).