

Unofficial translation of Bill No. 151. In case of discrepancy, the original Danish text shall prevail.

Introduced on 27 April 2005 by the Minister for Transport and Energy (Flemming Hansen)

Bill

on

a Public Foundation Responsible for State Participation in Hydrocarbon Licences and a State-owned Entity to Administer the Foundation

Part 1

Establishment of a public foundation

1.-(1) A public foundation shall be set up to have responsibility for the state's participation in hydrocarbon licences awarded in pursuance of the Danish Act on the Use of the Danish Subsoil.

(2) The foundation shall defray the costs directly associated with state participation, including the costs of exploration and investments in production installations commensurate with the licence shares placed in the foundation, and shall be liable for loans granted to cover these costs.

(3) The foundation may receive income from the state-owned licence shares.

(4) The Minister for Transport and Energy shall lay down more specific provisions on the activities of the foundation.

2. The income of the foundation shall first be applied towards covering the foundation's financing requirements, including the expenditure associated with state participation in hydrocarbon licences and the payment of interest and scheduled repayments on debt. Any excess profit shall be applied towards making additional repayments on debt. Further profits shall be transferred to the Treasury.

3. The Minister for Finance shall be authorized, through state relending, to meet the portion of the foundation's financing requirements that cannot be covered by the foundation's income.

Part 2

Establishment of a state-owned entity to administer the foundation, etc.

4. A state-owned entity shall be established for the purpose of administering the public foundation responsible for state participation in hydrocarbon licences. The state-owned entity shall be set up under the Ministry of Transport and Energy.

5.-(1) The object of the state-owned entity is to administer the public foundation; see section 1(1).

(2) The state-owned entity shall manage state participation in licences for the exploration for and production of hydrocarbons, as laid down in section 8 of the Act on the Use of the Danish Subsoil.

(3) The state-owned entity cannot act as the operator of licences granted in pursuance of the Act on the Use of the Danish Subsoil or apply for licences.

(4) Otherwise, the state-owned entity may perform such tasks as are assigned to it by the Minister for Transport and Energy.

6.-(1) The state-owned entity shall be managed by a President, who shall be responsible for the entity's operations.

(2) The President shall be in charge of the day-to-day administrative and financial management of the state-owned entity within the framework of the budget adopted, and shall appoint the staff of the entity.

(3) The Minister for Transport and Energy shall appoint the President.

7. The state-owned entity may obtain existing information about the Danish subsoil from the Danish Energy Authority and the Geological Survey of Denmark and Greenland ("GEUS"), free of charge. But the Danish Energy Authority and GEUS may demand payment from the state-owned entity for any copying expenses associated with providing the requested information.

8. The state shall defray the costs of operating the state-owned entity within an appropriations limit set out in the Finance Act.

Part 3

Commencement provision

9. This Act shall come into force on the day following its promulgation in the Danish Law Gazette.

10. This Act shall not extend to the Faroe Islands and Greenland.

Explanatory notes on the Bill

General explanatory notes

Purpose and content of the Bill

The purpose of the Bill is to create the basis for establishing an independent public foundation to defray the costs and receive any income associated with the state's participation in hydrocarbon licences. In addition, a new state-owned entity is to be set up for the purpose of administering the public foundation.

To date, DONG Efterforskning og Produktion A/S has managed state participation in licences for the exploration for and production of hydrocarbons. As a consequence of the political agreement on the terms and conditions for selling shares in DONG A/S, the Government wishes to carry out partial privatization of DONG. Therefore, DONG Efterforskning og Produktion cannot manage the state's participation in new licences in future. Thus, a new organization must be set up to undertake this responsibility.

As state participation in hydrocarbon licences is to remain an important element in securing Danish society a share of the financial proceeds from subsoil resources, it is necessary to ensure that a qualified organization also manages state participation in future. Against this background, it is proposed to set up a new state-owned entity tasked with managing the foundation's state participation in future licensing rounds and in new licences granted under the Open Door procedure. The Open Door procedure comprises areas in which no commercial oil or gas discoveries have so far been made. Throughout the onshore area as well as the offshore area, with the exception of the western part of the North Sea, the oil companies can continually apply for licences within an annual application period from 2 January to 30 September. The foundation and state-owned entity administering the foundation should be operational from the end of 2005, at the latest, at which time the state is expected to receive a number of shares in licences granted in connection with the 6th Licensing Round.

The division into a public foundation and a state-owned entity to administer the foundation is made to reflect the difference in the costs specifically relating to licence shares and those relating to administration. The licence-specific costs defrayed by the foundation will thus be determined externally on the basis of the individual licences granted, in which the state, with its statutory 20 per cent participation, will have a minority interest. Conversely, the administrative costs to be defrayed by the state-owned entity can be fixed more discretionarily based on political priorities, a factor that makes their direct inclusion in the Finance Act an advantage. Thus, the division into a foundation and a state-owned entity helps ensure the transparency of the two types of costs.

The foundation

The object of the foundation is to own the licence shares granted. Initially, the foundation's activities are expected to consist of holding shares in a number of exploration licences obtained in connection with the 6th Licensing Round. Participation in such licences will subject the foundation to continual financing requirements, as for a number of years exploration activities under the licences must be expected to involve costs only, possibly followed by investments in production installations.

The foundation will not be authorized to own shares in foreign licences or shares in Danish licences that it has not received through state participation. Thus, the foundation cannot of its own accord increase its interest in a licence unless this is part of a pre-emption procedure or a sole risk procedure under licences in which the foundation already holds a share. In such case, the Minister for Transport and Energy will have to approve the increase. The foundation may only increase its shares in respect of projects where there is reason to anticipate a positive financial outcome of the project, based on the calculation models customarily used in the industry. Furthermore, it is a condition that a majority of the participating private companies, measured on the basis of their percentage participation, also continue to take part in the investments/work under the licence. However, the foundation's share of the licence cannot exceed a ceiling of 40 per cent.

In addition, the foundation will be authorized to manage the state's 20 per cent participation in the Dansk Undergrunds Consortium licence (the DUC licence) after 2012. This 20 per cent state share results from the agreement of 29 September 2003 concluded between A. P. Møller-Mærsk and the Minister for Economic and Business Affairs.

The financing required for the individual years cannot be determined beforehand, as it will depend on a range of future investment decisions made by the parties holding the licences and the scope of any commercial discoveries made. Therefore, an accurate assessment of the capital the foundation will need from the start of operations cannot be made. Consequently, financing should be provided continuously and flexibly as specific financing requirements arise.

The fact that the foundation is state-owned and needs flexible financing makes state relending an expedient means of raising such financing. In using this relending model, the foundation will not need its own finance department with powers to float loans, etc. At the same time, this means of financing will make it possible to benefit from the state's liquidity premium, which follows from major loan issues. It is assumed that the state-owned entity will draw up annual investment plans on the basis of the budgets prepared within the individual licences, in order to determine the foundation's loan and financing requirements for the next year.

For a number of years, the foundation will have net financing requirements for new licences and for the payment of interest and repayments on existing loans. Later, any income from commercial discoveries and, from 2012, income from the state's 20 per cent share in DUC will aid in covering the foundation's net financing requirements in whole or in part. State relending will serve to provide only the portion of the required financing that cannot be covered by the foundation's income. The Minister for Finance will lay down the conditions for financing based on state relending.

If, in any individual year, the foundation receives income in excess of its annual financing requirements, such income is to be used to make additional repayments towards reducing the foundation's debt. If, in any individual year, the foundation has income exceeding its annual financing requirements and the foundation has repaid its total debt, it must transfer such excess income to the Treasury.

The foundation and state-owned entity are comprised by existing statutory provisions on public administration, presentation of financial statements and audits.

State-owned entity

A new state-owned entity will be set up under the Ministry of Transport and Energy to administer the foundation. It is proposed to establish the state-owned entity by statute in order to define a clear framework for its work.

The object of the state-owned entity will be to manage the state's ownership of the shares acquired in hydrocarbon licences through state participation; see section 8 of the Danish Subsoil Act (Act on the Use of the Danish Subsoil, see Consolidated Act No. 526 of 11 June 2002, as amended by Act No. 1230 of 27 December 2003 and Act No. 442 of 9 June 2004), from which it appears that a licence may stipulate that the state or a state-owned company shall take part in the activity covered by the licence. Thus, the foundation will be responsible for managing state participation in new licences pursuant to the Subsoil Act, and possibly a small number of licence shares transferred from DONG if this proves expedient in connection with DONG's partial privatization. In addition, the state-owned entity may perform any other tasks assigned to it by the Minister for Transport and Energy.

Establishing the state-owned entity at present means that the state will be able to set up an organization sufficiently qualified to manage state participation in the Sole Concession well ahead of 2012, when the state will receive a share of the extended Sole Concession.

As opposed to DONG Efterforskning og Produktion A/S, the new entity will not be authorized to undertake operatorships or to allow the foundation to acquire licence shares on commercial terms. Thus, the entity cannot act as a competitor to the oil companies.

Section 8 of the Subsoil Act implements parts of the provisions of the Licensing Directive (Directive 94/22/EEC of the European Parliament and of the Council of 30 May 1994). It appears from section 8 of the Subsoil Act that a licence may stipulate that the state or a state-owned company shall take part in the activity

covered by the licence. The state participant has the same rights and obligations as the other holders of the licence, with the exception of certain commercial decisions, such as the choice of the licensee's suppliers. Generally, the state participant may only exercise its voting rights when safeguarding such interests as are within the purview of the Subsoil Act. Moreover, the state participant may not exercise its voting rights to prevent the licensee from basing its activities on commercial principles.

The state-owned entity is to protect the state's interests in connection with decisions the licensee group makes on a large number of matters important to future income and expenditure.

The aim is for the state-owned entity to have close ties to the Danish Energy Authority, so that it can benefit from existing state expertise to the extent possible, primarily the expertise of the Danish Energy Authority, but also of the Geological Survey of Denmark and Greenland ("GEUS"). This assistance is to be provided in light of the fact that the new entity is expected to manage only a small number of licences during its first few years, for which reason it will presumably be unable to employ full-time staff with the relevant competencies.

Administrative and financial consequences for the state, counties and municipalities

The Bill has no administrative or financial consequences for counties and municipalities.

The new state-owned entity is to administer the foundation. The foundation will be responsible for state participation in new licences, in which connection the foundation is to defray 20 per cent of the costs associated with the licences, and, accordingly, 20 per cent of any income from the licences will accrue to the foundation. Thus, the state's share of any profit and loss is commensurate with its interest in the consortium.

As the state-owned entity and foundation will be established to manage state participation in new hydrocarbon licences, the activities will involve purely expenditure during the first few years. Only after a number of years, can the activities be expected to yield a possible income.

The total costs of exploration associated with licences awarded in the 6th Licensing Round are estimated to total between DKK 1 and 2 billion (2004 prices). Based on this assumption, the costs associated with a 20 per cent share in 6th Round licences will amount to about DKK 200-400 million (2004 prices). These costs are assumed to be incurred during the period from 2005-2011.

To this must be added costs incurred in connection with future licences granted in the Open Door procedure. For the period from 1997 to 2004, the exploration costs under the Open Door procedure are estimated to have totalled DKK 200 million (2004 prices), of which the state's share accounts for about DKK 40 million (2004 prices). For the period from 2005 to 2011, the level of activities in the Open Door area is expected to decline, for which reason the state's expenditure is expected to be under DKK 40 million.

Overall, the foundation is expected to incur exploration costs in the DKK 250-450 million range in the period from 2005 to 2011, an amount expected to be financed through state relending.

In the event that commercial discoveries are made, the foundation will have to pay its share of the costs associated with production, which will increase its financing requirements. For example, the investments made in connection with the South Arne licence totalled about DKK 7 billion over the period from 1997 through 2003. A 20 per cent share of this amount is equal to DKK 1.4 billion, an amount that would have to be financed through state relending.

If it is considered expedient to transfer a number of DONG's licence shares to the state in connection with DONG's privatization, the costs associated with any exploration and production activities will increase correspondingly, and such costs will also have to be financed through state relending.

When the state receives its 20 per cent share of the DUC licence in 2012, the intention is to place this share in the foundation. The profit from this share will then be applied towards covering the foundation's financing requirements or making additional repayments on its debt. Any profit in excess of the foundation's financing requirements must be transferred to the Treasury when all debt has been repaid.

The ability of the foundation to make repayments and pay interest on the loans will depend on whether the foundation's exploration costs are succeeded by income, including whether sufficiently large commercial

discoveries are made. If, in the somewhat longer term, the foundation does not receive income that can be used to make repayments and pay interest on state relending, the state will have to defray the costs and suffer a corresponding loss. Overall, the financial risk of using state relending to provide financing for the foundation is considered to be considerably higher than usual with state relending.

The state's relending will increase the national debt and the EMU debt on a scale equal to the lending provided. Conversely, any subsequent repayments made on the loans will reduce the national debt and the EMU debt.

Costs will be associated with establishing and operating the new state-owned entity to manage state participation, etc. The central government usually reckons with an amount of about DKK 1 million per employee per year to cover payroll costs, the cost of premises, IT expenses, etc. However, the cost per employee in the new entity may be considerably higher during some periods, as external assistance may have to be bought.

The intention is for the state-owned entity to be built up slowly in step with the level of activity. The entity's staffing requirements are estimated to run from four to eight persons for as long as the entity carries on exploration activity only. The number of employees will depend on how many licences are granted in the 6th Licensing Round, among other factors. More staff may be needed during the period immediately before and after 2012, from which time the entity is also to manage state participation in the extended Sole Concession. The estimate is that about six additional employees will have to be employed. The associated costs will total DKK 9.5 million per year, with payroll costs accounting for DKK 3.7 million. The establishment of the entity in 2005 will involve expenditure of DKK 3.8 million in 2005 alone, with payroll costs accounting for DKK 1.5 million.

Financial and administrative consequences of the Bill for the corporate sector

The purpose of the Bill is to establish a foundation with responsibility for the state's participation in hydrocarbon licences and a new state-owned entity that, by administering the foundation, can manage future state participation in hydrocarbon licences, since DONG Efterforskning og Produktion A/S is no longer to be in charge of state participation. Thus, the only change is that another institution will be in charge of state participation in future. Against this background, the Bill has no new administrative and financial consequences for the corporate sector.

The Bill has been submitted to the Division for Better Business Regulation under the Danish Commerce and Companies Agency in order to determine whether the Bill should be sent to one of the "enterprise panels" under the Ministry of Economic and Business Affairs for its comments. The Danish Commerce and Companies Agency finds that the Bill has no relevance for the corporate sector, and that it should therefore not be submitted to one of the "enterprise panels" under the Ministry of Economic and Business Affairs.

Environmental consequences of the Bill

The adoption of the Bill is not expected to have any environmental impact, as the Bill concerns the financing and management of state participation. State participation is already a fixed element of the current procedure for granting licences. Moreover, it should be noted that it is established practice before granting new hydrocarbon exploration and production licences to consult state environmental authorities, among others.

The position under EU law

According to Article 6 of the Licensing Directive (Directive 94/22/EEC of the European Parliament and of the Council of 30 May 1994 on the Conditions for Granting and Using Authorizations for the Prospection, Exploration and Production of Hydrocarbons), the state may demand to be granted an interest in licences.

The costs defrayed by the foundation in pursuance of section 1(2) will be financed in such a way that no state subsidy will be involved. Therefore, the Bill does not contain any elements affecting the position under EU law.

The provisions of the Licensing Directive have been implemented into section 8 of the Subsoil Act.

State participation in hydrocarbon licences is already an inherent part of the Danish system today. The purpose of the Bill is merely to make it possible to establish a new public institution to manage state participation and to allow for the financing of state participation.

Organizations consulted

The Bill has been submitted for consultation to the authorities and organizations mentioned below.

The Economic Council of the Labour Movement (Arbejderbevægelsens Erhvervsråd), the Central Organization of Industrial Employees in Denmark (CO-industri), the Danish Fishermen's Association (Danmarks Fiskeriforening), the Danish Society for the Conservation of Nature (Danmarks Naturfredningsforening), the Danish Shipowners' Association (Danmarks Rederiforening), the Danish Employers Confederation (Dansk Arbejdsgiverforening), the Confederation of Danish Industries (Dansk Industri), Denerco Oil, the Ministry of Finance, the United Federation of Danish Workers (Fælles Fagligt Forbund), Greenpeace Denmark, the Danish Confederation of Trade Unions (Landsorganisationen i Danmark), the Ministry of the Environment, Danmarks Nationalbank, the North Sea Operators Committee – Denmark, the Danish Organization for Renewable Energy (Organisationen for vedvarende Energi), the Office of the Auditor General (Rigsrevisionen), the Ministry of Taxation, the Prime Minister's Office and the Ministry of Economic and Business Affairs.

Overall assessment of consequences of the Bill

	Positive consequences/ less expenditure	Negative consequences/ more expenditure
Financial consequences for the state, municipalities and counties	None	More expenditure associated with the establishment and operation of the new state-owned entity. The financing provided through state relending involves a substantially larger risk of loss than is usually the case for state relending
Administrative consequences for the state, municipalities and counties	None	Establishment of a new state-owned entity
Financial consequences for the corporate sector	None	None
Administrative consequences for the corporate sector	None	None
Environmental consequences	None	None
Position under EU law	The Bill contains no elements affecting the position under EU law	

Explanatory notes on the individual provisions of the Bill

Re section 1

The Bill proposes the establishment of a public foundation with responsibility for state participation in hydrocarbon licences. The public foundation in question will be independent and will have no executive committee or employees. The foundation will be the owner of the state's licence shares in hydrocarbon licences granted in pursuance of the Subsoil Act and will be liable for loans granted to cover the expenditure associated with participating in the licences. Moreover, the foundation may receive income from the state-owned licence shares.

It appears from the authorization given in subsection (4) that the Minister for Transport and Energy will lay down more specific provisions on the activities of the foundation. In this connection, bylaws will be drawn up for the foundation, which will include provisions on the presentation of financial statements and the dissolution of the foundation.

Re section 2

During the first few years, the foundation's licence shares will involve costs only, such as the costs of exploration, etc.

The foundation will only receive income if commercial discoveries are made and production is subsequently initiated under the licences in which the foundation has shares, or if the foundation takes over the state's 20 per cent share in DUC. In the event that the foundation receives income from the activities, the provision determines how such income is to be applied in order to ensure that the foundation is as financially self-supporting as possible.

Placing the licence shares in a public foundation means that the state can transfer a possible profit to the Treasury. The profits of the foundation must be applied, in the order stated, towards covering the foundation's financing requirements, including the expenditure associated with state participation in hydrocarbon licences and the payment of interest and scheduled repayments on debt, and then towards making additional repayments on existing debt. Any excess income must be transferred to the Treasury.

Re section 3

The fact that the foundation is state-owned and needs flexible financing makes state relending an expedient means of raising such financing. When using this relending model, the foundation will not need its own finance department with powers to float loans, etc., since Danmarks Nationalbank, as the state's agent in national debt matters, will attend to the practicalities concerning the floating of loans. At the same time, this means of financing will make it possible to benefit from the liquidity premium that results from the state's loans being financed by major bond issues and thus involving high liquidity.

The Minister for Finance will lay down conditions for financing based on state relending.

Re section 4

The Bill proposes that the state-owned entity be established as an independent government agency tasked with administering the foundation.

The division into a public foundation and a state-owned entity is made to reflect the difference in the costs specifically relating to licence shares and those relating to administration. Thus, this division provides a high degree of transparency.

The intention is for the new entity to have close ties to the Danish Energy Authority. The new entity is envisaged as a minor organization that can base its activities on existing state expertise to the widest extent possible, primarily the expertise of the Danish Energy Authority, but also of the Geological Survey of Denmark and Greenland ("GEUS"), a strategy that will limit state expenditure for additional staff. The entity will

have to reimburse the expenditure, including the payroll costs incurred by the Danish Energy Authority and GEUS in this connection. This means that if the entity obtains opinions, etc. from the Danish Energy Authority or GEUS that do not already exist or would not have been prepared in the usual course of business, the entity will, using applicable hourly rates, have to reimburse the Danish Energy Authority or GEUS for their expenses. The entity is not to pay for opinions, etc. prepared by the Danish Energy Authority or GEUS for their own use. The entity can also make use of the administrative competencies of the Danish Energy Authority in relation to staff administration, IT, etc., such that the entity's own staff is primarily to have expertise on petroleum technology as well as financial and legal expertise. It is assumed that the new entity will reimburse the Danish Energy Authority for any additional costs associated with the entity's use of services relating to staff administration, etc.

However, the entity must be able to engage the services of non-state experts, in the event that the state lacks the necessary expertise or staff capacity.

Re section 5

The state-owned entity is assumed to be established as a minor organization. The foundation will not be authorized to expand the foundation's activities beyond the licence shares awarded. However, an exception may arise in the case where the holders of a specific licence have agreed that the other licence holders are to have pre-emptive rights if an individual licence holder wishes to withdraw from the activities. In that case, it may be an advantage for the state not to have stipulated in advance that the foundation may not exercise such rights. However, exercising a pre-emptive right is subject to the approval of the Minister for Transport and Energy. In the event that such a pre-emptive right is exercised, the state's share of the licence will increase beyond 20 per cent.

Generally, the state participant will have the same rights and obligations as the other holders of the licence, with the exception of certain commercial decisions, such as the choice of supplier; see section of 8 of the Subsoil Act. Generally, the state participant may only exercise its voting rights under the licences when safeguarding such interests as are within the purview of the Subsoil Act. Moreover, the state participant may not exercise its voting rights to prevent the licensee group from basing its activities on commercial principles.

Specifically, the object of the state-owned entity is to protect the state's interests when the licensee groups make decisions on a large number of matters important to future income and expenditure. Basically, the most important decisions will be those concerning proposals, etc. made by the licence operator with regard to exploration, development and production activities.

Moreover, subsection (3) stipulates that the state-owned entity will not be authorized to act as the operator of a licence; nor may it apply for licences. This provision also applies to licences outside Danish territory. This is because the state-owned entity may not be seen as a competitor to the oil companies.

To ensure a certain degree of flexibility, the Bill proposes in subsection (4) that the state-owned entity may perform such other tasks as are assigned to it.

Re section 6

The Bill proposes that a President manage the state-owned entity, as is the case for other government agencies. The President will be responsible for the day-to-day operation of the state-owned entity. The Minister for Transport and Energy will have overall responsibility for the state-owned entity, in keeping with the organizational setup of other government agencies. The President appointed by the Minister for Transport and Energy will be in charge of the administrative and financial management of the state-owned entity within the framework of the budget adopted, and the President must report directly to the department of the Ministry of Transport and Energy in the same way as the Presidents of other government agencies.

Re section 7

The Bill proposes that, unlike private enterprises, the state-owned entity may obtain information about the Danish subsoil free of charge from the Danish Energy Authority and GEUS for the purpose of managing its state participation. Such information may be obtained free of charge because the state already possesses such

information. Thus, the holders of licences granted pursuant to the Subsoil Act already submit samples and other information procured in connection with the activities comprised by the Act to the Danish Energy Authority and GEUS, without receiving any remuneration. The new state-owned entity may obtain such information about the subsoil with regard to licence areas in which the state has a share managed by the entity, as well as other areas. Apart from specific copying expenses, the state-owned entity is not to pay for its access to such information.

Re section 8

The Bill proposes that the new state-owned entity be included as a separate item in the Finance Act on a par with other government agencies, thus receiving appropriations to cover its expenditure for rent, furniture and equipment, salary for its employees, consultancy services, etc.

Re section 9

When passed, the Act is to come into force on the day following its promulgation in the Danish Law Gazette.

Re section 10

The Act will not extend to the Faroe Islands and Greenland.