

110TH CONGRESS  
1ST SESSION

# S. 1151

To provide incentives to the auto industry to accelerate efforts to develop more energy-efficient vehicles to lessen dependence on oil.

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IN THE SENATE OF THE UNITED STATES

APRIL 18, 2007

Mr. OBAMA introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide incentives to the auto industry to accelerate efforts to develop more energy-efficient vehicles to lessen dependence on oil.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Health Care for Hybrids Act”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—RETIRED EMPLOYEE HEALTH BENEFITS  
REIMBURSEMENT PROGRAM

Sec. 101. Coordinating task force.  
 Sec. 102. Establishment of program.  
 Sec. 103. Reporting.  
 Sec. 104. Authorization of appropriations.

## TITLE II—TAX PROVISIONS

Sec. 201. Clarification of economic substance doctrine.  
 Sec. 202. Penalty for understatements attributable to transactions lacking economic substance.  
 Sec. 203. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

### 1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) More than 50 percent of the oil consumed  
 4 in the United States is imported.

5 (2) If present trends continue, foreign oil will  
 6 represent 68 percent of the oil consumed in the  
 7 United States by 2025.

8 (3) The United States has only 3 percent of the  
 9 world's known oil reserves and the Nation's economic health is dependent on world oil prices.  
 10

11 (4) World oil prices are overwhelmingly dictated  
 12 by other countries, which endangers the economic  
 13 and national security of the United States.

14 (5) A major portion of the world's oil supply is  
 15 controlled by unstable governments and countries  
 16 that are known to finance, harbor, or otherwise support terrorists and terrorist activities.  
 17

18 (6) American automakers have lagged behind  
 19 their foreign competitors in producing hybrid and  
 20 other energy-efficient automobiles.

1           (7) Legacy health care costs associated with re-  
 2           tiree workers are an increasing burden on the global  
 3           competitiveness of American industries.

4           (8) Innovative uses of new technology in auto-  
 5           mobiles manufactured in the United States will—

6                   (A) help retain American jobs;

7                   (B) support health care obligations for re-  
 8           tiring workers in the automotive sector;

9                   (C) decrease our Nation’s dependence on  
 10          foreign oil; and

11                  (D) address pressing environmental con-  
 12          cerns.

13 **TITLE I—RETIRED EMPLOYEE**  
 14 **HEALTH BENEFITS REIM-**  
 15 **BURSEMENT PROGRAM**

16 **SEC. 101. COORDINATING TASK FORCE.**

17          (a) ESTABLISHMENT.—Not later than 6 months after  
 18 the date of the enactment of this Act, the Secretary of  
 19 Energy, the Secretary of Health and Human Services, the  
 20 Secretary of Transportation, and the Secretary of the  
 21 Treasury shall establish a task force (referred to in this  
 22 Act as the “task force”) to administer the program estab-  
 23 lished under section 102 (referred to in this Act as the  
 24 “program”).

1 (b) MEMBERSHIP.—The task force shall be composed  
 2 representatives of the departments headed by the officials  
 3 referred to in subsection (a), who shall be appointed by  
 4 such officials in equal numbers.

5 **SEC. 102. ESTABLISHMENT OF PROGRAM.**

6 (a) IN GENERAL.—Not later than 1 year after the  
 7 date of the enactment of this Act, the task force shall es-  
 8 tablish a program to reimburse eligible domestic auto-  
 9 mobile manufacturers for the costs incurred in providing  
 10 health benefits to their retired employees. The task force  
 11 shall determine compliance with the assurances under sub-  
 12 section (c)(4) through accepted measurements of fuel sav-  
 13 ings.

14 (b) CONSULTATION.—In establishing the program,  
 15 the task force shall consult with representatives from—

- 16 (1) eligible domestic automobile manufacturers;
- 17 (2) unions representing employees of such man-  
 18 ufacturers; and
- 19 (3) consumer and environmental groups.

20 (c) ELIGIBILITY REQUIREMENTS.—A domestic auto-  
 21 mobile manufacturer seeking reimbursement under the  
 22 program shall—

- 23 (1) submit an application to the task force at  
 24 such time, in such manner, and containing such in-  
 25 formation as the task force shall require;

1           (2) certify that such manufacturer is providing  
2 full health care coverage to all of its employees;

3           (3) provide assurances to the task force that  
4 the manufacturer will invest, in an amount equal to  
5 not less than 50 percent of the amount saved by the  
6 manufacturer through the reimbursement of its re-  
7 tiree health care costs under the program, in—

8           (A) the domestic manufacture and com-  
9 mercialization of petroleum fuel reduction tech-  
10 nologies, including alternative or flexible fuel  
11 vehicles, hybrids, and other state-of-the-art fuel  
12 saving technologies;

13           (B) retraining workers and retooling as-  
14 sembly lines for the activities described in sub-  
15 paragraph (A);

16           (C) researching, developing, designing, and  
17 commercializing high-performance, fuel-efficient  
18 vehicles, and other activities related to diversi-  
19 fying the domestic production of automobiles;  
20 and

21           (D) assisting domestic automobile compo-  
22 nent suppliers to retool their domestic manufac-  
23 turing plants to produce components for petro-  
24 leum fuel reduction technologies, including al-  
25 ternative or flexible fuel vehicles and hybrid, ad-

1           vanced diesel, and other state-of-the-art fuel  
2           saving technologies; and

3           (4) provide assurances to the task force that av-  
4           erage adjusted fuel economy savings achieved under  
5           paragraph (3) will not result in fuel economy de-  
6           creases in other automobiles manufactured in the  
7           United States; and

8           (5) provide additional assurances and informa-  
9           tion as the task force may require, including infor-  
10          mation needed by the task force to audit the manu-  
11          facturer's compliance with the requirements of the  
12          program.

13          (d) LIMITATION.—Not more than 10 percent of the  
14          annual retiree health care costs of any domestic auto-  
15          mobile manufacturer may be reimbursed under the pro-  
16          gram in any year.

17          (e) TERMINATION OF PROGRAM.—The program shall  
18          terminate on December 31, 2017.

19      **SEC. 103. REPORTING.**

20          (a) REIMBURSEMENT REPORTS.—Not later than 6  
21          months after the date of the enactment of this Act, and  
22          every 6 months thereafter, the task force shall submit a  
23          report to Congress that—

24                  (1) identifies the reimbursements paid under  
25                  the program; and

(2) describes the changes in the manufacture and commercialization of fuel saving technologies implemented by automobile manufacturers as a result of such reimbursements.

(b) CONSUMER INCENTIVES.—Not later than 1 year after the date of the enactment of this Act, the task force shall submit a report to Congress that—

(1) indicates the effectiveness of financial incentives available to consumers for the purchase of hybrid vehicles in encouraging such purchases; and

(2) recommends whether such incentives should be expanded.

#### **SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary in each of fiscal years 2008 through 2018 to carry out this title.

## **TITLE II—TAX PROVISIONS**

#### **SEC. 201. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating subsection (p) as subsection (q); and

(2) by inserting after subsection (o) the following:

1       “(p) CLARIFICATION OF ECONOMIC SUBSTANCE  
2 DOCTRINE.—

3               “(1) GENERAL RULES.—

4                       “(A) IN GENERAL.—In any case in which  
5 a court determines that the economic substance  
6 doctrine is relevant for purposes of this title to  
7 a transaction (or series of transactions), such  
8 transaction (or series of transactions) shall have  
9 economic substance only if the requirements of  
10 this paragraph are met.

11               “(B) DEFINITION OF ECONOMIC SUB-  
12 STANCE.—For purposes of subparagraph (A):

13                       “(i) IN GENERAL.—A transaction has  
14 economic substance only if—

15                               “(I) the transaction changes in a  
16 meaningful way (apart from Federal  
17 tax effects) the taxpayer’s economic  
18 position, and

19                               “(II) the taxpayer has a substan-  
20 tial nontax purpose for entering into  
21 such transaction and the transaction  
22 is a reasonable means of accom-  
23 plishing such purpose.

24               In applying subclause (II), a purpose of  
25 achieving a financial accounting benefit



1 shall not be taken into account in deter-  
2 mining whether a transaction has a sub-  
3 stantial nontax purpose if the origin of  
4 such financial accounting benefit is a re-  
5 duction of income tax.

6 “(ii) SPECIAL RULE WHERE TAX-  
7 PAYER RELIES ON PROFIT POTENTIAL.—A  
8 transaction shall not be treated as having  
9 economic substance by reason of having a  
10 potential for profit unless—

11 “(I) the present value of the rea-  
12 sonably expected pre-tax profit from  
13 the transaction is substantial in rela-  
14 tion to the present value of the ex-  
15 pected net tax benefits that would be  
16 allowed if the transaction were re-  
17 spected, and

18 “(II) the reasonably expected  
19 pre-tax profit from the transaction ex-  
20 ceeds a risk-free rate of return.

21 “(C) TREATMENT OF FEES AND FOREIGN  
22 TAXES.—Fees and other transaction expenses  
23 and foreign taxes shall be taken into account as  
24 expenses in determining pre-tax profit under  
25 subparagraph (B)(ii).

1           “(2) SPECIAL RULES FOR TRANSACTION WITH  
2 TAX-INDIFFERENT PARTIES.—

3           “(A) SPECIAL RULES FOR FINANCING  
4 TRANSACTIONS.—The form of a transaction  
5 which is in substance the borrowing of money  
6 or the acquisition of financial capital directly or  
7 indirectly from a tax-indifferent party shall not  
8 be respected if the present value of the deduc-  
9 tions to be claimed with respect to the trans-  
10 action is substantially in excess of the present  
11 value of the anticipated economic returns of the  
12 person lending the money or providing the fi-  
13 nancial capital. A public offering shall be treat-  
14 ed as a borrowing, or an acquisition of financial  
15 capital, from a tax-indifferent party if it is rea-  
16 sonably expected that at least 50 percent of the  
17 offering will be placed with tax-indifferent par-  
18 ties.

19           “(B) ARTIFICIAL INCOME SHIFTING AND  
20 BASIS ADJUSTMENTS.—The form of a trans-  
21 action with a tax-indifferent party shall not be  
22 respected if—

23                   “(i) it results in an allocation of in-  
24 come or gain to the tax-indifferent party in

1 excess of such party's economic income or  
 2 gain, or

3 “(ii) it results in a basis adjustment  
 4 or shifting of basis on account of over-  
 5 stating the income or gain of the tax-indif-  
 6 ferent party.

7 “(3) DEFINITIONS AND SPECIAL RULES.—For  
 8 purposes of this subsection:

9 “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
 10 The term ‘economic substance doctrine’ means  
 11 the common law doctrine under which tax bene-  
 12 fits under subtitle A with respect to a trans-  
 13 action are not allowable if the transaction does  
 14 not have economic substance or lacks a business  
 15 purpose.

16 “(B) TAX-INDIFFERENT PARTY.—The  
 17 term ‘tax-indifferent party’ means any person  
 18 or entity not subject to tax imposed by subtitle  
 19 A. A person shall be treated as a tax-indifferent  
 20 party with respect to a transaction if the items  
 21 taken into account with respect to the trans-  
 22 action have no substantial impact on such per-  
 23 son's liability under subtitle A.

24 “(C) EXCEPTION FOR PERSONAL TRANS-  
 25 ACTIONS OF INDIVIDUALS.—In the case of an

individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary, and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection

1 shall be construed as being in addition to any such  
 2 other rule of law.

3 “(5) REGULATIONS.—The Secretary shall pre-  
 4 scribe such regulations as may be necessary or ap-  
 5 propriate to carry out the purposes of this sub-  
 6 section. Such regulations may include exemptions  
 7 from the application of this subsection.”.

8 (b) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to transactions entered into after  
 10 the date of the enactment of this Act.

11 **SEC. 202. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
 12 **UTABLE TO TRANSACTIONS LACKING ECO-**  
 13 **NOMIC SUBSTANCE.**

14 (a) IN GENERAL.—Subchapter A of chapter 68 of the  
 15 Internal Revenue Code of 1986 is amended by inserting  
 16 after section 6662A the following:

17 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
 18 **UTABLE TO TRANSACTIONS LACKING ECO-**  
 19 **NOMIC SUBSTANCE.**

20 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an  
 21 noneconomic substance transaction understatement for  
 22 any taxable year, there shall be added to the tax an  
 23 amount equal to 40 percent of the amount of such under-  
 24 statement.

1       “(b) REDUCTION OF PENALTY FOR DISCLOSED  
 2 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
 3 stituting ‘20 percent’ for ‘40 percent’ with respect to the  
 4 portion of any noneconomic substance transaction under-  
 5 statement with respect to which the relevant facts affect-  
 6 ing the tax treatment of the item are adequately disclosed  
 7 in the return or a statement attached to the return.

8       “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-  
 9 DERSTATEMENT.—For purposes of this section—

10           “(1) IN GENERAL.—The term ‘noneconomic  
 11 substance transaction understatement’ means any  
 12 amount which would be an understatement under  
 13 section 6662A(b)(1) if section 6662A were applied  
 14 by taking into account items attributable to non-  
 15 economic substance transactions rather than items  
 16 to which section 6662A would apply without regard  
 17 to this paragraph.

18           “(2) NONECONOMIC SUBSTANCE TRANS-  
 19 ACTION.—The term ‘noneconomic substance trans-  
 20 action’ means any transaction if—

21           “(A) there is a lack of economic substance  
 22 (within the meaning of section 7701(p)(1)) for  
 23 the transaction giving rise to the claimed ben-  
 24 efit or the transaction was not respected under  
 25 section 7701(p)(2), or

1                   “(B) the transaction fails to meet the re-  
2                   quirements of any similar rule of law.

3           “(d) RULES APPLICABLE TO COMPROMISE OF PEN-  
4   ALTY.—

5                   “(1) IN GENERAL.—If the 1st letter of pro-  
6           posed deficiency which allows the taxpayer an oppor-  
7           tunity for administrative review in the Internal Rev-  
8           enue Service Office of Appeals has been sent with  
9           respect to a penalty to which this section applies,  
10          only the Commissioner of Internal Revenue may  
11          compromise all or any portion of such penalty.

12                   “(2) APPLICABLE RULES.—The rules of para-  
13          graphs (2) and (3) of section 6707A(d) shall apply  
14          for purposes of paragraph (1).

15                   “(e) COORDINATION WITH OTHER PENALTIES.—Ex-  
16   cept as otherwise provided in this part, the penalty im-  
17   posed by this section shall be in addition to any other pen-  
18   alty imposed by this title.

19                   “(f) CROSS REFERENCES.—

20                   “(1) For coordination of penalty with under-  
21          statements under section 6662 and other special  
22          rules, see section 6662A(e).

23                   “(2) For reporting of penalty imposed under  
24          this section to the Securities and Exchange Commis-  
25          sion, see section 6707A(e).”.

1 (b) COORDINATION WITH OTHER UNDERSTATE-  
2 MENTS AND PENALTIES.—

3 (1) The second sentence of section  
4 6662(d)(2)(A) of the Internal Revenue Code of 1986  
5 is amended by inserting “and without regard to  
6 items with respect to which a penalty is imposed by  
7 section 6662B” before the period at the end.

8 (2) Subsection (e) of section 6662A of the In-  
9 ternal Revenue Code of 1986 is amended—

10 (A) in paragraph (1), by inserting “and  
11 noneconomic substance transaction understate-  
12 ments” after “reportable transaction under-  
13 statements” both places it appears,

14 (B) in paragraph (2)(A), by inserting “and  
15 a noneconomic substance transaction under-  
16 statement” after “reportable transaction under-  
17 statement”,

18 (C) in paragraph (2)(B), by inserting  
19 “6662B or” before “6663”,

20 (D) in paragraph (2)(C)(i), by inserting  
21 “or section 6662B” before the period at the  
22 end,

23 (E) in paragraph (2)(C)(ii), by inserting  
24 “and section 6662B” after “This section”,



1 (F) in paragraph (3), by inserting “or non-  
 2 economic substance transaction understate-  
 3 ment” after “reportable transaction understate-  
 4 ment”, and

5 (G) by adding at the end the following new  
 6 paragraph:

7 “(3) NONECONOMIC SUBSTANCE TRANSACTION  
 8 UNDERSTATEMENT.—For purposes of this sub-  
 9 section, the term ‘noneconomic substance trans-  
 10 action understatement’ has the meaning given such  
 11 term by section 6662B(c).”.

12 (3) Paragraph (2) of section 6707A(e) of the  
 13 Internal Revenue Code of 1986 is amended—

14 (A) by striking “or” at the end of subpara-  
 15 graph (B), and

16 (B) by striking subparagraph (C) and in-  
 17 serting the following new subparagraphs:

18 “(C) is required to pay a penalty under  
 19 section 6662B with respect to any noneconomic  
 20 substance transaction, or

21 “(D) is required to pay a penalty under  
 22 section 6662(h) with respect to any transaction  
 23 and would (but for section 6662A(e)(2)(C))  
 24 have been subject to penalty under section

1           6662A at a rate prescribed under section  
2           6662A(c) or under section 6662B,”.

3           (c) CLERICAL AMENDMENT.—The table of sections  
4 for part II of subchapter A of chapter 68 of the Internal  
5 Revenue Code of 1986 is amended by inserting after the  
6 item relating to section 6662A the following:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking  
economic substance, etc.”.

7           (d) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to transactions entered into after  
9 the date of the enactment of this Act.

10 **SEC. 203. DENIAL OF DEDUCTION FOR INTEREST ON UN-**  
11 **DERPAYMENTS ATTRIBUTABLE TO NON-**  
12 **ECONOMIC SUBSTANCE TRANSACTIONS.**

13           (a) IN GENERAL.—Section 163(m) of the Internal  
14 Revenue Code of 1986 (relating to interest on unpaid  
15 taxes attributable to nondisclosed reportable transactions)  
16 is amended—

17           (1) by striking “attributable” and all that fol-  
18 lows and inserting the following: “attributable to—  
19           “(1) the portion of any reportable transaction  
20 understatement (as defined in section 6662A(b))  
21 with respect to which the requirement of section  
22 6664(d)(2)(A) is not met, or

1           “(2) any noneconomic substance transaction  
2       understatement (as defined in section 6662B(c)).”;  
3       and

4           (2) by inserting “and noneconomic substance  
5       transactions” after “transactions”.

6       (b) EFFECTIVE DATE.—The amendments made by  
7       this section shall apply to transactions after the date of  
8       the enactment of this Act in taxable years ending after  
9       such date.

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