

109TH CONGRESS  
1ST SESSION

# S. 2045

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

NOVEMBER 17, 2005

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.**

4 This Act may be cited as the “Health Care for Hy-  
5 brids Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The United States imports over half the oil  
9 it consumes.

1           (2) According to present trends, the United  
2 States reliance on foreign oil will increase to 68 per-  
3 cent of its total consumption by 2025.

4           (3) With only 3 percent of the world's known  
5 oil reserves, the health of the United States economy  
6 is dependent on world oil prices.

7           (4) World oil prices are overwhelmingly dictated  
8 by countries other than the United States, thus en-  
9 dangering our economic and national security.

10          (5) Legacy health care costs associated with re-  
11 tiree workers are an increasing burden on the global  
12 competitiveness of American industries.

13          (6) American automakers have lagged behind  
14 their foreign competitors in producing hybrid and  
15 other energy efficient automobiles.

16          (7) Innovative uses of new technology in auto-  
17 mobiles in the United States will help retain Amer-  
18 ican jobs, support health care obligations for retiring  
19 workers in the automotive sector, decrease America's  
20 dependence on foreign oil, and address pressing envi-  
21 ronmental concerns.

## 22                                   **TITLE I—PROGRAM**

### 23   **SEC. 101. COORDINATING TASK FORCE.**

24           Not later than 6 months after the date of enactment  
25 of this Act, the Secretary of Energy, the Secretary of

1 Health and Human Services, the Secretary of Transpor-  
2 tation, and the Secretary of the Treasury shall establish,  
3 and appoint an equal number of representatives to, a task  
4 force (referred to in this Act as the “task force”) to ad-  
5 minister the program established under this Act.

6 **SEC. 102. ESTABLISHMENT OF PROGRAM.**

7 (a) IN GENERAL.—Not later than 1 year after the  
8 date of enactment of this Act, the task force established  
9 under section 101 shall establish a program to provide fi-  
10 nancial assistance to eligible domestic automobile manu-  
11 facturers for the costs incurred in providing health bene-  
12 fits to their retired employees.

13 (b) CONSULTATION.—In establishing the program  
14 under subsection (a), the task force shall consult with rep-  
15 resentatives from the domestic automobile manufacturers,  
16 unions representing employees of such manufacturers, and  
17 consumer and environmental groups.

18 (c) ELIGIBLE DOMESTIC AUTOMOBILE MANUFAC-  
19 Turer.—To be eligible to receive financial assistance  
20 under the program established under subsection (a), a do-  
21 mestic automobile manufacturer shall—

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

1           (2) certify that such manufacturer is providing  
2 full health care coverage to all of its domestic em-  
3 ployees;

4           (3) provide an assurance that the manufacturer  
5 will invest an amount equal to not less than 50 per-  
6 cent of the amount of health savings derived by the  
7 manufacturer as a result of its retiree health care  
8 costs being covered under the program under this  
9 section, in—

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

15                   (B) the retraining of workers and retooling  
16 of assembly lines for such domestic manufac-  
17 ture and commercialization;

18                   (C) research and development, design,  
19 commercialization, and other costs related to  
20 the diversifying of domestic production of auto-  
21 mobiles through the offering of high perform-  
22 ance fuel efficient vehicles; and

23                   (D) assisting domestic automobile compo-  
24 nent suppliers to retool their domestic manufac-  
25 turing plants to produce components for petro-

1           leum fuel reduction technologies, including al-  
2           ternative or flexible fuel vehicles, hybrid, ad-  
3           vanced diesel, or other state-of-the-art fuel sav-  
4           ing technologies; and

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

10          (d) **LIMITATION.**—The total amount of financial as-  
11         sistance that may be provided each year under the pro-  
12         gram under this section with respect to any single domes-  
13         tic automobile manufacturer shall not exceed an amount  
14         equal to 10 percent of the retiree health care costs of that  
15         manufacturer for that year.

16         **SEC. 103. REPORTING.**

17           Not later than 6 months after the date of enactment  
18         of this Act, and every 6 months thereafter, the task force  
19         shall submit to Congress a report on any financial assist-  
20         ance provided under this program under this Act and the  
21         resulting changes in the manufacture and commercializa-  
22         tion of fuel saving technologies implemented by auto man-  
23         ufacturers as a result of such financial assistance. Not  
24         later than 1 year after the date of enactment of this Act,  
25         the task force shall submit a report to Congress on the

1 effectiveness of current consumer incentives available for  
2 the purchase of hybrid vehicles in encouraging the pur-  
3 chase of such vehicles and whether these incentives should  
4 be expanded.

5 **SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated, such sums  
7 as may be necessary in each fiscal year to carry out this  
8 Act.

9 **SEC. 105. LIMITATION ON BACKSLIDING.**

10 To be eligible to receive financial assistance under  
11 this title, a manufacturer shall provide assurances to the  
12 task force that fuel savings achieved with respect its aver-  
13 age adjusted fuel economy will not result in decreases with  
14 respect to fuel economy elsewhere in the domestic fleet.  
15 The task force shall determine compliance with such as-  
16 surances using accepted measurements of fuel savings.

17 **SEC. 106. TERMINATION OF PROGRAM.**

18 The program established under this title shall termi-  
19 nate on December 31, 2015.

20 **TITLE II—OFFSETS**

21 **SEC. 201. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**  
22 **TRINE.**

23 (a) IN GENERAL.—Section 7701 of the Internal Rev-  
24 enue Code of 1986 is amended by redesignating subsection

1 (o) as subsection (p) and by inserting after subsection (n)  
2 the following new subsection:

3 “(o) CLARIFICATION OF ECONOMIC SUBSTANCE  
4 DOCTRINE; ETC.—

5 “(1) GENERAL RULES.—

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

13 “(B) DEFINITION OF ECONOMIC SUB-  
14 STANCE.—For purposes of subparagraph (A)—

15 “(i) IN GENERAL.—A transaction has  
16 economic substance only if—

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

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

1 In applying subclause (II), a purpose of  
2 achieving a financial accounting benefit  
3 shall not be taken into account in deter-  
4 mining whether a transaction has a sub-  
5 stantial nontax purpose if the origin of  
6 such financial accounting benefit is a re-  
7 duction of income tax

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

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

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

23 “(C) TREATMENT OF FEES AND FOREIGN  
24 TAXES.—Fees and other transaction expenses  
25 and foreign taxes shall be taken into account as

1 expenses in determining pre-tax profit under  
2 subparagraph (B)(ii).

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

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

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

1           “(i) it results in an allocation of in-  
2           come or gain to the tax-indifferent party in  
3           excess of such party’s economic income or  
4           gain, or

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

9           “(3) DEFINITIONS AND SPECIAL RULES.—For  
10          purposes of this subsection—

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

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

1           “(C) EXCEPTION FOR PERSONAL TRANS-  
2           ACTIONS OF INDIVIDUALS.—In the case of an  
3           individual, this subsection shall apply only to  
4           transactions entered into in connection with a  
5           trade or business or an activity engaged in for  
6           the production of income.

7           “(D) TREATMENT OF LESSORS.—In apply-  
8           ing paragraph (1)(B)(ii) to the lessor of tan-  
9           gible property subject to a lease—

10                   “(i) the expected net tax benefits with  
11                   respect to the leased property shall not in-  
12                   clude the benefits of—

13                           “(I) depreciation,

14                           “(II) any tax credit, or

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

18                   “(ii) subclause (II) of paragraph  
19                   (1)(B)(ii) shall be disregarded in deter-  
20                   mining whether any of such benefits are al-  
21                   lowable.

22           “(4) OTHER COMMON LAW DOCTRINES NOT AF-  
23           FECTED.—Except as specifically provided in this  
24           subsection, the provisions of this subsection shall not  
25           be construed as altering or supplanting any other

1 rule of law, and the requirements of this subsection  
 2 shall be construed as being in addition to any such  
 3 other rule of law.

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

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

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

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

18 **“SEC. 6662A. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
 19 **UTABLE TO TRANSACTIONS LACKING ECO-**  
 20 **NOMIC SUBSTANCE, ETC.**

21 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an  
 22 noneconomic substance transaction understatement for  
 23 any taxable year, there shall be added to the tax an  
 24 amount equal to 40 percent of the amount of such under-  
 25 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(o)(1)) for  
23 the transaction giving rise to the claimed ben-  
24 efit or the transaction was not respected under  
25 section 7701(o)(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) Subsection (e) of section 6707A of the In-  
13 ternal 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 new item:

          “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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