Cruising down the HOV Lane: Federal & (and) Local Incentives Steer Drivers to Purchase Hybrid Vehicles

Elizabeth Robbins

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CRUISING DOWN THE HOV LANE: FEDERAL & LOCAL INCENTIVES STEER DRIVERS TO PURCHASE HYBRID VEHICLES

SECTION I: INTRODUCTION

Global climate change, erosion of the ozone layer and air pollution are all environmental issues that have plagued United States policy-makers for years. At various times, many nations have resolved to try to slow or reverse the damage to the environment through international cooperation. While the United States is sometimes hesitant to involve itself in international solutions, Congress and recent administrations have made efforts to decrease harmful domestic contributions to these problems. For example, in 1955 Congress passed the first version of the Clean Air Act (CAA) in response to scientific findings that an increase in motor vehicle use, among other factors, contributed to air pollution and posed public health risks. In the CAA, Congress authorized the Environmental Protection Agency (EPA) to promulgate national ambient air quality standards. Subsequent amendments to the

1. See F. Sherwood Rowland, Responding to the Global Warming Problem: Atmospheric Changes Caused by Human Activities: From Science to Regulation, 27 ECOLOGY L.Q. 1261, 1262 (2001) (explaining smog, ozone depletion and global warming are significant atmospheric environmental problems). Rowland began discovering atmospheric problems while researching for the federal government in the 1970s. See id. at 1270-73 (detailing discoveries and initial attempts to regulate).


5. See 42 U.S.C. § 7601 (granting authority to EPA Administrator to promulgate regulations under CAA); accord 40 C.F.R. pt. 50.2 (2008) (defining scope of Administrator’s authority to promulgate regulations under CAA).
CAA have further defined the EPA’s role in regulating air pollutant emissions.\(^6\)

Motor vehicle emissions are particularly noxious and contribute significantly to air pollution.\(^7\) Since 1970 Congress has been actively searching for ways to curb the negative effects of automobile emissions.\(^8\) In addition to periodically amending the CAA, Congress has enacted other laws with various environmental policy goals and different means for achieving them.\(^9\) Most notably, Congress began creating incentives for motor vehicle manufacturers to produce fuel-efficient vehicles and consumers to purchase them.\(^10\)

For example, Congress passed the Energy Policy Act of 2005 (the Act) in an effort to decrease the United States’ dependence on foreign energy sources and to increase domestic energy conservation and efficiency.\(^11\) Specifically, the Act includes incentives for consumers to purchase hybrid motor vehicles.\(^12\) Hybrid motor vehicles (hybrids), as defined by the Act, run on power from a rechargeable energy source, in addition to a normal internal fuel combustion engine.\(^13\)

State and local governments are becoming increasingly involved in trying to limit the effects of motor vehicle pollution on air

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7. See MATTHEW BENDER & CO., INC., LEXISNEXIS GROUP, GOVERNMENTAL REGULATION OF AIR POLLUTION, 1-2 TREATISE ON ENVIRONMENTAL LAW § 2.06 (MB 2007) (recognizing motor vehicle emissions are greatest contributors to air pollution, but not most harmful); see also OFFICE OF MOBILE SOURCES, ENVTL. PROT. AGENCY, AUTOMOBILE EMISSIONS: AN OVERVIEW 1 (1994), http://www.epa.gov/otaq/consumer/05-autos.pdf (explaining that despite low individual automobile emissions, cumulative effect is high).


10. For a further discussion of federal incentive programs, see infra notes 33-69 and accompanying text.


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quality. In compliance with the EPA Administrator’s mandates under the CAA, state and local governments have initiated their own programs that create incentives for those who purchase hybrids. One incentive, popular among many states, allows people who drive hybrid vehicles to utilize the “High Occupancy Vehicle” (HOV) lanes on highways, which are otherwise reserved during rush hour for vehicles occupied by two or more passengers. Other measures include giving state tax breaks to hybrid owners and allowing hybrid cars to park for free in designated areas.

The goal of this Comment is to analyze the effectiveness of government programs designed to encourage consumers to purchase hybrid vehicles. Section II explains hybrid technology and how hybrid vehicles benefit the environment. Section III discusses the criticisms of and defenses to federal incentives for purchasing hybrid vehicles. Section IV focuses on state and local incentives, including the HOV lane exception for hybrids, and analyzes the relative success of the various incentive programs. Section V evaluates the future of federal, state and local incentive programs in light of recent Congressional actions. Lastly, Section VI urges the


15. See id. § 7401(a)(3) (finding air pollution prevention to be mainly state matter); see also id. § 7402 (encouraging cooperation between state, local and federal governments).


18. For a further discussion of the technology and environmental benefits of hybrids, see infra notes 23-32 and accompanying text.

19. For a further discussion of the criticisms and defenses of incentive programs, see infra notes 33-69 and accompanying text.

20. For a further discussion of state and local incentive programs, see infra notes 73-117 and accompanying text.

21. For a further discussion of the future of incentive programs, see infra notes 118-50 and accompanying text.
government to continue providing incentives for consumers to purchase hybrids.22

SECTION II: A BRIEF INTRODUCTION TO HYBRID VEHICLES

A hybrid motor vehicle, as defined by the Alternative Motor Vehicle Credit (AMVC), is a motor vehicle that "draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using consumable fuel, and a rechargeable energy storage system."23 All hybrids on the market and in development rely on the underlying technology that allows the vehicle to run on electricity at low speeds and during acceleration, and then on a conventional gasoline-fueled combustion engine at higher speeds.24

Hybrids benefit the environment in a number of ways; for example, they use less fuel than conventional cars because of the cooperation between the electric motor and the fuel engine.25 This feature is especially important in the current world climate, as natural resources are dwindling and the United States is becoming in-
creasingly dependent on foreign countries to meet domestic energy demands.\textsuperscript{26}

Additionally, hybrids release fewer harmful emissions.\textsuperscript{27} While emissions cannot be absolutely eliminated because hybrids use a fuel-powered engine, they give off significantly fewer harmful emissions than conventional vehicles due to the use of an electric motor.\textsuperscript{28} Hybrids, therefore, help to meet the goals of the Energy Policy Act by lowering emissions, and thereby reducing automobile contributions to air pollution.\textsuperscript{29}

Hybrids do, however, present certain disadvantages that may dissuade consumers from purchasing one. For instance, they may not be suitable for people with long commutes because hybrids are most efficient in stop-and-go city traffic and less beneficial in high speed and long distance highway driving.\textsuperscript{30} Moreover, hybrid models can cost several thousand dollars more than conventional vehicles.\textsuperscript{31} The higher cost is a result of the newer technology and because there are currently fewer hybrids on the market.\textsuperscript{32}

\textbf{SECTION III: FEDERAL INCENTIVES}

In an effort to counteract the "cons" of buying hybrid cars, Congress created incentives to persuade car buyers to choose hy-


\textsuperscript{29} For a discussion of the policy goals of the Energy Policy Act of 2005, see supra note 9 and accompanying text.

\textsuperscript{30} See Joseph R. Perone, \textit{Is This Car Worth It?}, \textit{The Star-Ledger} (Newark, N.J.), June 20, 2006, at 21 (stating hybrids offer little benefit to people with long commutes); See Hybrid-Electric Vehicles, supra note 25 (explaining hybrids typically get more gas mileage per gallon in cities than on highways). \textit{See also} Leslie J. Allen, \textit{Hybrid Owners Want MPG, Not Performance}, \textit{Automotive News}, Dec. 3, 2007, at 3 (providing statistics showing benefits of hybrids in city driving).

\textsuperscript{31} See Perone, supra note 30, at 21 (citing higher cost of hybrid model vehicles); \textit{but see} Allen, supra note 30, at 3 (asserting that purchase of some hybrid models is worth investment because costs will be recouped).

brid vehicles. The most notable is the AMCV, which provides a tax credit to hybrid owners.\(^{33}\) This program has not gone without criticism and changes may be necessary.

### A. Alternative Motor Vehicle Credit

The AMVC amended the Internal Revenue Service (IRS) Code and was codified in the Energy Policy Act of 2005.\(^{34}\) The stated goal of the Energy Policy Act is "to ensure jobs for our future with secure, affordable, and reliable energy."\(^{35}\) To meet that goal, Congress included the AMVC with the idea that enticing more people to buy hybrids would ultimately minimize dependence on energy resources.\(^{36}\)

The AMVC replaced the Clean Fuel Vehicle Property Tax Deduction that was available to hybrid owners who had purchased their vehicles between 2001 and 2005.\(^{37}\) Under the AMVC, those who purchase hybrid vehicles meeting the emissions requirements listed in the Act qualify for a tax credit from the IRS.\(^{38}\) Unlike a deduction, which is subtracted from an individual’s income, “thus reducing the amount of adjusted gross income on which the taxpayer is taxed,” a credit is “ subtracted directly from the total amount of federal tax owed, thus reducing or even eliminating the taxpayer’s tax obligation.”\(^{39}\) This credit is a “one time” opportunity, and is only available in the tax year in which the consumer

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36. See I.R.C. § 30B (providing tax credit for hybrid vehicle purchasers).


38. See I.R.C. § 30B(d)(3) (2006) (listing requirements for hybrid qualification). For a hybrid to qualify under the tax code, it must be propelled by a combination of a fuel combustion engine and a rechargeable energy system, and at least meet emissions standards set forth in the CAA. See id. § 30B(d)(3).

39. IRS Fact Sheet, supra note 37 (differentiating between tax credit and tax deduction).
purchased the hybrid. The credit, based on "incremental cost limitations," ranges from $250 to $3,150 per car, and only applies to cars purchased after January 1, 2006.

The AMVC also contains a "sunset provision" that places a cap on the number of purchasers per model who will receive the tax credit. In application, this phase out period means that once a manufacturer sells 60,000 hybrids to a dealer, the amount of credit available to purchasers will decline gradually until the credit is no longer available for that particular model. So far, Toyota and Honda are the only two manufacturers that have reached the 60,000 sales limit. Furthermore, even if a manufacturer does not reach the 60,000 sales limit, the credit currently only applies to hybrids purchased prior to December 31, 2010.

### B. Criticisms of the Alternative Motor Vehicle Credit

While the federal government's effort to encourage consumers to purchase hybrids is commendable, there are a few flaws in the design of the AMVC. The first and most notable flaw is the cap on the number of hybrids per manufacturer that are eligible to receive the tax credit. Once the manufacturer sells the statutory maximum of 60,000 hybrids and thereby reaches the cap imposed by Congress, the full credit amount is no longer available to purchasers.

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40. See Perry, supra note 37 (explaining rules for qualification for tax credit).
42. See I.R.C. § 30B(f) (limiting application of tax credit). The Act requires a "phase out period . . . beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified vehicles manufactured by the manufacturer of the vehicle . . . is at least 60,000." Id. § 30B(f)(2).
43. See Perry, supra note 37 (explaining phase out period). For example, because Toyota has reached the sales maximum, one who purchased a 2008 Toyota Prius after September 30, 2007, will not receive the tax credit. See Internal Revenue Service, 2008 Model Year Hybrid Vehicles, http://www.irs.gov/irs/article/0,,id=176409,00.html (last visited Oct. 4, 2008) (listing status of phase out period per model and year 2008).
45. See I.R.C. § 30B(j)(2) (terminating tax credit for hybrids on December 31, 2010).
46. See I.R.C. § 30B(f)(2) (limiting tax credit available per hybrid manufacturer to 60,000 hybrids).
ers and continues to decrease until the fifth calendar quarter after the manufacturer has reached the sales cap. As the law is currently written, the credit program terminates entirely on December 31, 2010, regardless of whether every manufacturer reaches the 60,000 sales cap.

Simple politics can explain the reason for the sales cap. Motivated by the fear that foreign companies like Honda and Toyota would enjoy an unlimited benefit of increased sales, American automakers successfully lobbied Congress to limit the credit program. Nevertheless, the cap is counter-productive if Congress is truly committed to the protection of the environment, as opposed to the protection of domestic automakers’ bottom lines. The tax credit is often cited as a significant factor in pushing potential car buyers towards buying a hybrid, and without the availability of the credit, hybrid sales could potentially stall. This result is debatable, however, since many consumers attest they would buy hybrids regardless of the credit offered. Their decision would be based on their concerns about fuel efficiency or the environment, rather than the tax credit.

Another criticism of the tax credit is founded on a practical perspective. As more manufacturers are making hybrid models of most of their cars, the benefit of hybrid technology varies depending on the model of the vehicle, creating a disparity in fuel effi-

47. See IRS Fact Sheet, supra note 37 (illustrating phase out). Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records its sale of the 60,000th hybrid passenger automobile or light truck or advance lean burn technology motor vehicle. For the second and third calendar quarters after the quarter in which the 60,000th vehicle is sold, taxpayers may claim 50 percent of the credit. For the fourth and fifth calendar quarters, taxpayers may claim 25 percent of the credit. No credit is allowed after the fifth quarter. Id.

48. See I.R.C. § 30B(j) (terminating AMVC). But see H.R. 2557, 110th Cong. § 1 (2007) (proposing extension of AMVC until 2016); see also H.R. 765, 110th Cong. § 1 (2007) (proposing extension of AMVC until 2014). These bills did not ultimately get voted on in the House of Representatives, but the fact of their proposals shows that some members of Congress recognize that it would be beneficial to extend the AMVC.


50. See Tompor, supra note 49 (questioning effectiveness of cap). “You can debate whether a cap makes sense at all if the idea is to encourage consumers to pony up the extra money it takes to buy environmentally friendly technology.” Id.

51. See Perry, supra note 37 (explaining many customers are fully informed about alternative motor vehicle tax credit prior to purchasing).

52. See id. (explaining motivation for buying hybrids).

53. See id. (citing reasons customers purchase hybrids).
ciency among hybrids.\textsuperscript{54} Hybrids that fail to serve the public purpose of reducing emissions and increasing fuel efficiency should not qualify for the tax incentive.\textsuperscript{55}

The tax credit can also be criticized because of the demographic that benefits from it. A recent study showed that the words "[d]emocratic, wealthy, educated and active" most accurately describe the majority of hybrid owners.\textsuperscript{56} If wealthy individuals are already more likely than other individuals to purchase hybrids, as the study suggests, the tax break disproportionately benefits those people who have a higher income and are already inclined to purchase hybrids.\textsuperscript{57} Rather than enticing new buyers, the incentive benefits wealthier individuals who would buy, and could afford to buy, the hybrid regardless of the tax credit.\textsuperscript{58}

Yet, higher income individuals that purchase hybrids, intending to take advantage of the AMVC, might be disappointed that they do not get as big a tax break as they expected.\textsuperscript{59} Due to the complex method of calculating income taxes, wealthier citizens who pay the Alternative Minimum Tax (AMT) might not benefit from the AMVC because it is credited against the AMT.\textsuperscript{60} Wealthy

\textsuperscript{54.} See David Shepardson, Owning a Hybrid Could Pay Off; Congress Considering More Tax Breaks, Perks to Entice Buyers to Consider the Gas-Electric Option, DETROIT NEWS, July 20, 2006, at 1C (arguing all hybrid models are not equal); see also Warren Brown, High-End Hybrids that Run on Contradictions, WASH. POST, Sept. 23, 2007, at G02 (explaining luxury hybrids are not fuel efficient like standard hybrids); see also Peter Hoy, Least Fuel-Efficient Hybrids, FORBES.COM, Sept. 18, 2007, http://www.forbes.com/2007/09/17/hybrids-efficient-fuel-forbeslife-cx_ph_0918vehicles.html (demonstrating some hybrids not more fuel efficient than counterparts).

\textsuperscript{55.} See Shepardson, supra note 54 (explaining criticism of tax incentive for all hybrids).


\textsuperscript{57.} See id. (explaining hybrid owners typically have higher incomes).

\textsuperscript{58.} See id. (showing incentive might be misplaced based on demographic it benefits).

\textsuperscript{59.} See Susan Tompor, Complex Rules May Eat Hybrid Tax Credit; Savings Vary by Model and Purchase Date, DETROIT FREE PRESS, Feb. 11, 2007, Business, at 1 (showing AMVC cannot be used to reduce Alternative Minimum Tax).

\textsuperscript{60.} See I.R.C. § 55(a) (2006) (imposing Alternative Minimum Tax). The AMT is an alternative tax system Congress established in order to make sure that wealthy individuals, who might otherwise benefit from various tax deductions, exclusions and credits, remain liable for a fair share of taxes. See Matthew Bender & Co., Inc., LexisNexis Group, RATIONALE AND SIGNIFICANCE OF THE ALTERNATIVE MINIMUM TAX (AMT), 1-1 TAX PLANNING FOR THE ALTERNATIVE MINIMUM TAX § 1.01 (MB 2008) (explaining Congress's intention in establishing AMT). Generally, the AMT is treated as a separate tax system, and the tax code designates whether losses
citizens, with incomes between $200,000 and $750,000, are especially vulnerable to the AMT, and, incidentally, make up a significant amount of hybrid purchasers qualifying for the AMVC.\textsuperscript{61} In effect, the AMT can "take back" the AMVC, leaving the purchaser with little or no tax credit.\textsuperscript{62}

The Sport Utility Vehicle (SUV) tax loophole similarly reduces effectiveness of the AMVC.\textsuperscript{63} The SUV tax loophole creates a federal tax break for small business owners who purchase SUVs for their businesses.\textsuperscript{64} Small business owners who need a new vehicle might purchase an SUV instead of a hybrid because they qualify for the SUV tax loophole.\textsuperscript{65} Rather than deterring the purchase of more fuel-consuming vehicles, the loophole undermines the goal of the Energy Policy Act to reduce dependence on foreign oil.\textsuperscript{66}

Despite the SUV tax loophole’s failure to deter the purchase of gas-guzzling vehicles, the increase in gas prices, combined with the fuel efficiency gained from hybrid technologies, might be incentive enough for consumers to purchase hybrids.\textsuperscript{67} Additionally, the gov-

and other similar deductions will be measured against the AMT instead of the regular tax code. See \textit{id.}. See also Tompor, \textit{supra} note 59, at 1 (explaining not every hybrid purchaser will benefit from AMVC because of Alternative Minimum Tax). \textit{Cf.} H.R. 2748, 110th Cong. § 1 (2007) (proposing amendment to I.R.C. to allow AMVC against the AMT). Though this bill did not pass, it shows that members of Congress are aware of the possible conflict explained between these taxes.

\textsuperscript{61} See Tompor, \textit{supra} note 59, at 1 (describing individuals most likely to be affected by Alternative Minimum Tax).

\textsuperscript{62} See \textit{id.} (explaining effect of Alternative Minimum Tax on AMVC).

\textsuperscript{63} See Ridlehoover, \textit{supra} note 32, at 215 (analyzing concurrent federal tax incentives for effectiveness).

\textsuperscript{64} See I.R.C. § 179 (providing tax write-off for small business owners that purchase qualifying SUVs). See \textit{id.} § 280F (defining passenger vehicles that qualify for tax write-off). "Passenger automobile means any 4-wheeled vehicle—(i) which is manufactured primarily for use on public streets, roads, and highways and (ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less." \textit{Id.} § 280F(d)(5)(A) (limiting application of § 179). Due to the practical interplay between these two sections, larger SUVs still qualify for the tax write-off. See Ridlehoover, \textit{supra} note 32, at 231-32 (explaining how these provisions create SUV tax loophole).

\textsuperscript{65} See \textit{generally} Ridlehoover, \textit{supra} note 32, at 233-35 (explaining consequences of SUV tax loophole).

\textsuperscript{66} See \textit{generally id.} (suggesting SUV tax loophole undermines federal environmental policy).

\textsuperscript{67} See Editorial, \textit{The Hybrid's Free Ride}, \textsc{Wash. Post.}, Jan. 16, 2005, at B6 (asserting hybrids’ fuel efficiency creates natural incentive); see also Hoy, \textit{supra} note 54 (explaining that maximum fuel efficiency is desirable because of rising gas prices). Incentives might be unnecessary because as gas prices continue to rise, "the reality now is that people want maximum mpg . . . " and "[t]he most fuel-efficient hybrids are selling a lot better than the hybrids that are oriented toward power." \textit{Id.} But \textit{see} Joel Achenbach, \textit{Why We Keep on Truckin'}, \textsc{Wash. Post}, May 20, 2007, at B1 (arguing gas tax would not significantly reduce demand for gas). An expert who calculates demand for gas found that "every time gas prices jump 10
ernment could take the additional step of artificially increasing the price of gas.\textsuperscript{68} Raising gas prices may be the most effective way to convince people who are on the fence about buying a fuel efficient vehicle to go through with the purchase.\textsuperscript{69}

\section*{SECTION IV: STATE AND LOCAL INCENTIVES}

In cooperation with the EPA, each state implements its own environmental policies.\textsuperscript{70} While the particulars of the incentives created to encourage the purchase of hybrid vehicles vary slightly among the states, they are generally very similar.\textsuperscript{71}

A. High Occupancy Vehicle Lanes and Access for Hybrids

Permitting hybrid vehicles to utilize HOV lanes is a very popular incentive available in many states. The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) gives state transportation authorities the power to establish and regulate HOV lanes.\textsuperscript{72} In general, HOV lanes are reserved for automobiles occupied by more than one passenger during rush hour, when traffic is at its highest volume.\textsuperscript{73} The policy percent, the demand drops, at most, only 1 percent . . . ” implying “[g]as taxes won’t help curb demand as much as [one might] think.” \textit{Id.}

\textsuperscript{68} See Joann Muller, \textit{Big Gulpers}, \textit{FORBES}, Feb. 25, 2008, at 38 (proposing alternative economic incentive to purchase fuel efficient vehicles).

\textsuperscript{69} See \textit{id.} (arguing consumers will only purchase hybrids if legislature taxes gas).

\textsuperscript{70} See Clean Air Act, § 7401(a)(3) (2006) (finding air pollution prevention to be mainly state matter); see also \textit{id.} § 7402 (delegating pollution prevention mainly to state and local governments and encouraging cooperation between state, local and federal governments).

\textsuperscript{71} For a discussion of state and local incentive programs, see infra notes 73-117 and accompanying text.


An HOV lane . . . is a special lane reserved for the use of carpools, vanpools and buses. They are usually located next to the regular, or unrestricted, lanes. These special lanes enable those who carpool or ride the bus to bypass the traffic in the adjacent, unrestricted ("general purpose") lanes. \textit{Id.}
goal behind many HOV rules is to promote carpooling, to decrease traffic and to diminish the cumulative polluting effect of an individual's daily commute to work.\textsuperscript{74}

In a similar vein, many policy-makers believed it was wise to create an exception so that hybrid vehicles, which serve the same purpose as carpooling (i.e., reducing emissions and benefiting the environment), could also enjoy the privilege of using HOV lanes.\textsuperscript{75} Congress enacted this exception in 2005, authorizing states to allow qualified low emissions vehicles, including qualified hybrids, to use HOV lanes.\textsuperscript{76} Currently, the hybrid exemption for HOV lanes will expire on September 30, 2009.\textsuperscript{77}

Many states have taken advantage of the current exemption by enacting laws that permit low emissions vehicles to utilize state HOV lanes.\textsuperscript{78} States that permit the exemption include Arizona, California, Florida, Georgia, New Jersey, Utah and Virginia, among others.\textsuperscript{79} Enforcement of the exemption differs by state.\textsuperscript{80} In some states, such as California, owners of qualifying hybrids must obtain a sticker from the Department of Motor Vehicles and display this sticker on the car so police can identify which cars may use HOV lanes.\textsuperscript{81} In other states, like Virginia, owners of qualifying hybrids must obtain a "Clean Special Fuel License Plate" from the Depart-

\textsuperscript{74} See 23 U.S.C. § 101(b) (2006) (declaring policy behind SAFETEA-LU). Specifically, Congress resolved that the transportation system and the environment are closely linked and transportation should be improved so as to benefit the environment and American's lifestyles. See id. § 101(b)(3) (finding close connection between transportation and environment).

\textsuperscript{75} See id. § 166(b)(5) (providing exemption for low emissions vehicles); see also SAFETEA-LU High Occupancy Vehicle Facilities Exemption Rule, 72 Fed. Reg. 29,102, 29,104 (proposed May 24, 2007) (to be codified at 40 C.F.R. pt. 601) (asserting Congress' sense to continue creating incentives for consumers to buy hybrids). "It is the sense of Congress to provide additional incentives (including the use of HOV facilities on State and Interstate highways) for the purchase and use of hybrid . . . technologies, which have been proven to reduce exhaust emissions and decrease fossil fuel consumption . . ." Id.

\textsuperscript{76} See 23 U.S.C. § 166(b)(5)(A) (permitting states to allow exemption for hybrid vehicles); see also Proposed HOV Exemption, supra note 73, at 1 (explaining effects of exemption).


\textsuperscript{78} For a discussion of states that provide an HOV lane exemption for hybrid drivers, see supra note 16.

\textsuperscript{79} See Hybrid Incentives, supra note 17 (listing various state and local incentives).

\textsuperscript{80} See id. (listing various state and local incentives).

ment of Motor Vehicles which permits access to certain HOV lanes. Each state’s law regarding HOV lane use includes similar language, limiting the viability of its HOV exemption to continued federal approval. The EPA recently filed a proposed rule to identify low emissions vehicles and exempt them from the HOV restrictions, which will last until the September 30, 2009 deadline or until Congress extends the exemption.

B. Criticisms of the HOV Lane Exemption

It is debatable whether the HOV lane exemption should extend beyond September 30, 2009. In its recently proposed rule, the EPA claims that granting exemptions for hybrids and other low emissions vehicles, even when only occupied by one passenger, does not adversely affect air quality. The EPA cites the voluntary nature of the exemption program to show that a state can decide whether permitting hybrids to use their HOV lanes will meet the state’s environmental goals. Hypothetically, if single-occupant hybrids would be detrimental to a state’s air quality goals, then the state could choose to not implement the exemption, thus limiting adverse effects. Additional safeguards, such as: (1) stricter fuel economy standards for hybrids to qualify for the exemption; (2) the inclusion of minimum speed requirements so states can monitor whether the HOV lanes are getting too crowded; and (3) the possibility that the EPA will tighten the exemption to allow only very low emissions hybrids to qualify for the exemption, all show that the EPA has considered and accepted the consequences of allowing hybrids to use HOV lanes.


83. For a list of state laws and applicable language, see supra note 16 and accompanying text.


85. See id. at 29,114 (claiming HOV exemptions for hybrids have no adverse effects on air quality).

86. See id. (showing EPA procedures placing responsibility on individual states prevent adverse air quality effects).

87. See id. (demonstrating voluntary nature of exemption prevents adverse air quality effects).

88. See id. (listing safeguards for air quality control in addition to allowing hybrids to use HOV lanes).
Hybrid owners undoubtedly enjoy the freedom of using HOV lanes so much that some purchasers cite it as a powerful factor in deciding whether to buy a hybrid. So powerful is the HOV exemption that some consumers buy hybrids based most prominently on the hope of a faster commute, without even considering the benefits to the environment. One car dealer from Northern Virginia, a region where purchasing hybrids is particularly popular, estimated that “95 percent of people who buy a [Toyota] Prius...say it’s to get into HOV [lanes].”

Yet, the proliferation of hybrids that qualify for the HOV exemption in some states is so great that the exemption is arguably counter-productive. The HOV lanes often become just as congested as normal traffic lanes because they are filled with hybrids that do not meet the minimum passenger requirement. In addition, because not all hybrids are equally effective in lowering emissions and increasing fuel economy, many hybrids may qualify for the exemption even though they are less environmentally friendly than other hybrid models. Moreover, because hybrids are most effective at lowering emissions and increasing fuel economy when driven in stop-and-go traffic, permitting the exemption on highways, where hybrids are not as fuel efficient, is not necessarily the most effective means of achieving the policy goals of HOV lanes.

For these reasons, the EPA emphasized the ability of each state to respond to the traffic and pollution situations particular to their jurisdiction; states such as Virginia and California, where both hy-

89. See Sawyers, supra note 26, at 28B (explaining incentives like HOV exemption are factors beyond environmental concerns that entice consumers to buy hybrids). “They say consumers cite a desire to reduce fuel emissions and decrease dependency on foreign oil as reasons for choosing a fuel-sipping hybrid. Others buy them so they can ride solo in car pool lanes.” Id.

90. See Tori Tellem, Larceny in the Carpool Lane, N.Y. TIMES, May 13, 2007, § 12, at 6 (showing commuters buy hybrids to shorten commute time, not necessarily for environment). “The program made hybrids more appealing not only for drivers who wanted an environmentally friendly vehicle, but also for commuters desperate to get out of crawling traffic and into the car-pool express lanes.” Id. In California, for example, the stickers proving the cars are licensed have become so valuable a “black market” has evolved. See id. (discussing effect of stickers in California).

91. Editorial, The Hybrid’s Free Ride, supra note 67 (estimating percentage of purchasers motivated by HOV exemption).


93. See id. (claiming exemption does not logically follow from original HOV policy).

94. See Brown, supra note 54, at G02 (arguing too many hybrids qualify HOV exemption).

95. See id. (explaining contradictory nature of HOV lane exemption).
brid sales and traffic are booming, acted to minimize the exemp-
tion. 96 For instance, California limited the number of hybrid
owners allowed to have the HOV decals to 85,000 owners. 97 Vir-
ginia, whose exemption is due to expire in 2009, only permits the
HOV lane exemption on less crowded highways, like I-66, but not
on more crowded highways like I-95 and I-395, to reduce hybrid
congestion on those roads. 98

At this time, each state’s law regarding the HOV exemption is
conditioned on federal approval. 99 While the proposed EPA rule
currently offers only minimum guidelines to states and permits
them to implement the HOV exemption for hybrids, it might be-
come clear in the future that more permanent and stringent rules
are necessary.

C. Miscellaneous City and State Incentives

Aside from HOV lane exemptions, states and localities have en-
acted many other policies as incentives or rewards for buying a hy-
brid. 100 Many cities allow hybrid owners to park for free in certain
designated locations. 101 Other programs grant rebates on licensing
fees and exemptions from emissions testing. 102

96. See SAFETEA-LU High Occupancy Vehicle Facilities Exemption Rule, 72
601) (permitting states to more narrowly identify hybrids to qualify for exemp-
tion); see also Cusick, supra note 92 (explaining EPA’s proposed rule may help nar-
row field of eligibility).

97. See Clean Air Stickers, supra note 81 (announcing no more decals
available).

98. See Press Release, Virginia Highway Safety Office News Release, HOV-Land
Extended for Vehicles With Clean Fuel Plates: Restrictions Continue for I-95/395 (May 21,
news/news.asp?id=5263 (last visited Oct. 6, 2008) (excluding I-95 and I-395 from
HOV exemption for hybrids).

99. For a list of state laws subject to federal approval, see supra note 16 and
accompanying text.

100. For a list of state and local incentives other than the HOV lane exemp-
tion, see supra note 17 and accompanying text; see also supra notes 101-09 and
accompanying text.

101. See Hybrid Incentives, supra note 17 (listing various state and local incen-
tives). For example, San Jose and Los Angeles, California; New Haven, Connecti-
cut; Austin and San Antonio, Texas; and Salt Lake City, Utah, all permit hybrids to
park for free in certain city parking lots. See id. (listing incentives concerning park-
ing). Similarly, Baltimore provides discounted parking for hybrid owners. See id.
detailing parking provisions).

102. See id. (listing local incentives). Aspen, Colorado grants rebates on li-
censing fees for hybrid owners and allows them to park in certain restricted park-
www.aspenpitkin.com/depts/61/ppexpansion.cfm (last visited Oct. 5, 2008) (ex-
empting hybrids from needing parking permits to park in metered areas). Colo-
rado and Maryland, among other states, exempt hybrid owners from annual
In addition to federal tax credits, some states issue their own tax credits or deductions for hybrid purchases. For example, Connecticut and Washington exempt owners of certain hybrids from paying sales tax on the purchase of their vehicle. New Mexico and Washington, D.C. excise hybrid buyers from owing an excise tax. Illinois issued a $1,000 rebate with the purchase of a hybrid, and Pennsylvania has also initiated a successful rebate program. Louisiana gives a state income tax credit to hybrid owners. Oregon provides both a residential tax credit and a business emissions test requirement. See 1 COLO. CODE REGS. § 204-11(200.0) (d) (2) (2007) (exempting gas-electric vehicles from emissions testing in Colorado); see also Md. CODE ANN., TRANSP. § 23-206.3 (West 2007) (exempting qualified hybrids from emissions testing in Maryland).

103. See Hybrid Incentives, supra note 17 (listing states providing tax credits for hybrid purchasers).


105. See Hybrid Incentives, supra note 17 (listing state laws granting exemption from excise taxes). New Mexico exempts purchasers of new hybrids from paying an excise tax at the time the owner receives the original certificate of title. See N.M. STAT. ANN. § 7-14-6(G) (West 2007) (creating one time excise tax exemption for purchasers of hybrids between 2004 and 2009). Washington, D.C. provides an exemption from the excise tax for individuals owning hybrids that achieve forty miles to the gallon in city driving. See D.C. CODE ANN. § 50-2201.03(j)(3)(J) (LexisNexis 2008) (creating excise tax exemption for hybrid purchasers).


107. See LA. REV. STAT. ANN. §§ 47:38, 47:287.75 (2008) (providing income tax credit for hybrid purchasers). The credit cannot exceed the lesser of two percent of the cost of the vehicle or $1500. See Hybrid Incentives, supra note 17 (describing Louisiana's income tax credits).
tax credit. The preceding is just a sample of the tax benefits and other incentives available across the United States.

Recently, non-governmental entities also began offering incentives for individuals to purchase hybrids. Insurance companies and private employers are designing programs intended to entice prospective clients, customers or employees to buy hybrid vehicles. Insurance companies, such as Traveler's Insurance and Farmer's Insurance Group, offer ten percent automobile insurance discounts to customers who drive hybrid vehicles. Furthermore, some businesses are beginning to offer rewards to their customers for driving hybrids. In addition to offering free parking for hotel guests driving or renting hybrid cars, some hotels also offer discounted room rates. Some private employers are even giving rewards to their employees who purchase hybrids. Bank of

108. See Oregon Department of Energy-Transportation, Hybrid Electric and Alternative Fuel Vehicles, http://egov.oregon.gov/ENERGY/TRANS/hybridcr.shtml (last visited Oct. 5, 2008) (explaining Residential Energy Tax Credit and Business Energy Tax Credit). The Residential Energy Tax Credit is capped at $1,500 for an individual who purchased a hybrid, and the Business Energy Tax Credit provides a tax credit for business owners driving hybrids for business use based on thirty-five percent of the net difference between purchasing a conventional model of the same make and year as the hybrid model. See id.

109. For a complete list of state and federal incentives, see HybridCenter.org, State and Federal Incentives, supra note 44 and accompanying text.

110. For a further discussion of non-governmental entities offering incentives, see infra notes 111-17 and accompanying text.

111. See HybridCenter.org, State and Federal Incentives, supra note 44 (listing non-governmental entities offering incentives).


113. See HybridCenter.org, State and Federal Incentives, supra note 44 (describing hotel discounts for hybrid drivers).

114. See Kimpton Hotels & Restaurants, Hybrid Parking Promotion, http://www.kimptonhotels.com/promotions/hybrid-parking.aspx (last visited Oct. 6, 2008) (offering customers who drive hybrids various benefits in different cities). In Chicago, the hotel offers free parking and a wine reception, and in San Francisco the hotel gives customers a choice of a food voucher or free valet parking, among other options. See id.

America, for instance, gives a $3,000 reward for purchasing a hybrid, motivated by the company’s own concern about air quality and its recognition that many employees have daily commutes that contribute to air pollution.\textsuperscript{116}

Although incentives from non-governmental agencies are new, they are already proving successful. In the cities where the Bank of America program originally launched, the number of employees purchasing hybrids has quadrupled.\textsuperscript{117}

\textbf{SECTION V: THE FUTURE OF INCENTIVE PROGRAMS}

In the waning days of 2007, Congress passed the Energy Independence and Security Act (EISA).\textsuperscript{118} The purpose of the EISA was “to move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas capture and storage options . . .”\textsuperscript{119}

The EISA encourages manufacturers to increase output of hybrids and to conduct more research on hybrid technology.\textsuperscript{120} Additionally, it sets mandatory benchmarks that car manufacturers must meet regarding fuel economy for new vehicles.\textsuperscript{121} The statute, however, does not contain certain provisions regarding advanced vehicle technologies, which were at one point included in the bill.\textsuperscript{122}

\textsuperscript{116.} See \textit{Press Release, Bank of America, supra note 115} (listing company’s environmental concerns and desire to help employees cut costs); \textit{see also} Connolly, supra note 115, at 1E (explaining Bank of America’s motivation for offering incentive).

\textsuperscript{117.} See Connolly, supra note 115, at 1E (explaining success of pilot program in original cities). Bank of America launched the pilot program in Boston, Charlotte, and Los Angeles. \textit{See id.}


\textsuperscript{119.} \textit{Id.} (listing goals for statute).


\textsuperscript{121.} \textit{See id. § 102(b)(2)} (increasing fuel economy standards for automobiles).

\textsuperscript{122.} \textit{See 153 CONG. REC. S15,427} (daily ed. Dec. 13, 2007) (statement of Sen. Levin) (expressing regret about lack of inclusion of certain technology incentive measures). “I regret that the bill does not include tax incentives for retooling of manufacturing facilities to produce alternative technology vehicles and components that would have provided an immediate economic benefit to the auto manufacturers and suppliers who will bear the burden of meeting the regulatory requirements of this legislation.” \textit{Id.}
For example, the Act does not specifically provide incentives for manufacturers to produce more hybrids, nor does it prolong the tax credits created in the Energy Policy Act of 2005; instead, it focuses more on funding alternative fuel research.123

A. Hybrid Owners of America

Although incentive programs have proven successful in convincing undecided consumers to purchase hybrids, the prudence of such statutory measures is yet to be determined.124 Many hybrid owners praise the success of incentive programs and are lobbying Congress and their local legislatures for more change.125 For example, a group of hybrid owners formed the Hybrid Owners of America (HOA) in 2006.126 The HOA’s stated mission is “to track and defend existing hybrid purchase incentives (e.g. tax breaks and HOV lane access), as well as advocating for new incentive arrangements.”127

The HOA has designed a “five-point action plan” containing initiatives for which it encourages its members to lobby their legislators.128 Echoing hybrid owners’ most popular sentiments about incentives, HOA calls for legislators to: (1) expand the definition of vehicles that qualify for tax incentives so that the phase out provision in the AMVC is not as harsh; (2) create additional tax incentives for those who retrofit their hybrids to become even more fuel efficient plug-in hybrids; (3) provide tax relief for corporations and businesses that offer private incentives to employees to buy hybrids; (4) provide rewards for domestic automobile manufacturers that

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123. See Energy Independence and Security Act §§ 221-34 (funding and mandating research in biofuels and other alternative fuels).

124. For a discussion of the success of incentive programs in motivating people to buy hybrids, see supra notes 51-53, 89-91 and accompanying text.


128. See Send a Message, supra note 125 (encouraging members to send emails to legislators).
research and produce new hybrids; and (5) create milestones for switching over federal fleet purchases.\textsuperscript{129}

1. \textit{Allow More Vehicles to Qualify for AMVC to Mitigate the Phase Out}

The 60,000 hybrid per manufacturer phase out currently included in the AMVC is problematic. One criticism of limiting the availability of the credit is that it will undermine the goal of the Energy Policy Act of 2005, as well as generally reduce benefits to the environment.\textsuperscript{130}

More car manufacturers are making hybrid versions of their conventional models, but it is doubtful that every hybrid truly achieves the promised fuel efficiency and lower emissions.\textsuperscript{131} Many "luxury hybrids" and hybrid SUVs achieve very little benefit in fuel economy over their conventional counterparts.\textsuperscript{132} For example, the EPA estimates that the 2007 GMC Sierra Classic 1500 four-wheel drive pick-up truck gets fifteen miles to the gallon on the highway, while its hybrid counterpart gets sixteen highway miles per gallon.\textsuperscript{133} Federal and local governments should maintain firm qualifying standards to prevent hybrids that only achieve minimal improvements in fuel economy from reaping significant governmental benefits. The EISA’s strict mandates for future fuel efficiency, along with stringent standards for hybrids to qualify for incentives, may help ensure that only the most deserving and environmentally friendly hybrids benefit from government incentives.\textsuperscript{134}

\textsuperscript{129.} See id. (listing five-point action plan).

\textsuperscript{130.} For a discussion of the phase out period and its consequences, see supra notes 42-48 and accompanying text. See also Chris Woodyard, \textit{Toyota: Extend Hybrid Tax Credit; Rivals Say Little About the Issue}, USA TODAY, Feb. 17, 2007, at 5B (encouraging extension of AMVC). Toyota especially demonstrated that as the tax credit disappeared, demand for Toyota hybrids also decreased. See id. If fewer people are compelled to buy hybrids, then it will be more difficult to achieve better air quality. See id.

\textsuperscript{131.} See Brown, supra note 54, at G02 (explaining not all hybrid models are equally fuel efficient); see also Hoy, supra note 54 (asserting new hybrid models are very similar to conventional counterparts).

\textsuperscript{132.} See Hoy, supra note 54 (comparing various hybrid model cars with conventional counterparts).

\textsuperscript{133.} See FuelEconomy.gov, Compare Side-by-Side, http://www.fueleconomy.gov/feg/sbs.htm (last visited Oct. 6, 2008) (providing for comparison of hybrid models with conventional counterparts); see also Hoy, supra note 54 (demonstrating minimum improvement in fuel economy in some models).

\textsuperscript{134.} See Editorial, \textit{The Hybrid’s Free Ride}, supra note 67 (arguing stricter regulations mandating cleaner engines reduce hybrid’s advantage over conventional cars).
2. Create Tax Incentives for Hybrid Owners Who Retrofit Hybrids to Become Plug-ins

Creating tax incentives for people who retrofit their hybrids to become plug-in hybrids may seem like a natural extension of the existing incentive programs, but it is also a contested issue. Plug-in hybrids run mainly as electric vehicles, powered by lithium ion batteries that are rechargeable from an external source. The gasoline motor in a plug-in hybrid is only activated if the vehicle is driven too far before reaching an external charger. The future and viability of plug-in technology remains unclear, although Toyota recently announced plans to develop a plug-in hybrid before 2010. In theory, plug-ins reduce fuel consumption and emissions even more than other hybrids, but it is still too expensive for automakers to achieve zero emissions.

Critics note that electricity to power the plug-ins will still likely come from coal-fired power plants, thereby negating significant environmental benefits. Additionally, there is concern about the potentially detrimental effects of plug-in batteries on the environment once discarded, as well as safety concerns surrounding the use of lithium ion in the batteries. For now, however, the EISA contains incentives for institutions and car manufacturers to continue researching plug-in technology.


136. See id. (describing how plug-in hybrids are powered).


139. See Maynard, supra note 137, at C1 (explaining concern regarding plug-in technology).

140. See Brown, supra note 54, at G02 (raising concern about consequences of disposing of hybrid batteries). See also Cheng, supra note 138 (explaining safety concerns regarding lithium). In 2006, lithium used in computer batteries caused a rash in affected users and the computer manufacturers had to conduct a major recall. See id.

141. See Energy Independence and Security Act of 2007, Pub. L. No. 110-140, § 131(b), 121 Stat. 1492, 1508-11 (2007) (creating competitive grant program to provide relevant entities grants to encourage use of plug-in vehicles); see also id. § 131(d)(2) (creating plug-in hybrid electric vehicle competition for institutes of higher education); see also id. § 132(a) (requiring Secretary to establish grant program for domestic vehicle manufacturers to produce plug-in hybrids).
3. **Create Tax Incentives for Corporations Offering Incentives to Employees to Purchase Hybrids**

The federal government has not yet created a policy for helping corporations implement incentive programs for employees that purchase hybrids, despite the success of the existing companies’ programs.\(^{142}\) As manufacturers begin to reach the 60,000 sales limit and the phase out period begins, the government should focus on helping corporations that offer other incentives to employees to purchase hybrids.

Currently, corporations are motivated internally by their desire to create good will between the public and their shareholders, as well as by their board of directors’ adoptions of environmentally friendly policies aimed at reducing the corporation’s “carbon footsteps.”\(^{143}\) Although the EISA did not contain tax credits for corporations that offer such employee incentives, the fact that corporations nevertheless continue to offer such incentives can only be seen as a positive step. If corporations act as leaders in achieving favorable public policies, such as improving the environment, then society will eventually follow.\(^{144}\)

4. **Provide Benefits for Domestic Manufacturers Who Research and Produce New Hybrids**

The EISA includes benefits for domestic automobile manufacturers that research and produce new hybrid models.\(^{145}\) Nevertheless, the Secretary of Energy must design a program to distribute grants to manufacturers that “encourage domestic production of efficient hybrid, plug-in electric hybrid, plug-in electric drive, and

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142. For a discussion of the success of non-governmental incentive programs, see *supra* notes 112-17 and accompanying text.

143. See HybridCars.com, Corporate Incentives for Hybrids and Alternative Cars, http://www.hybridcars.com/corporate-incentives.html (last visited Oct. 6, 2008) (listing various corporate motivations for adopting employee incentive programs). The Chief Executive Officer of Hyperion, a California-based software company, says the employee incentive program creates “an enormous amount of good will around the globe for this, far beyond the cost of the program.” *Id.* The CEO of the IT firm Integrated Archive Systems believes creating an incentive program for the employees is “the right thing to do.” *Id.*

144. See Don Mayer, *Corporate Citizenship and Trustworthy Capitalism: Co-creating a More Peaceful Planet*, 44 AM. BUS. L.J. 237, 285 (2007) (urging businesses to pursue environmentally friendly policies and innovations). “Ironically, businesses are probably the best solution that we can have to the challenges that face us as a society, because they are the ones that can innovate, [and] can produce solutions . . . that may . . . have a whisker of a chance of achieving sustainability.” *Id.* at 286.

advanced diesel vehicles."146 Continued research in new hybrid technologies will lead, hopefully, to even more fuel efficient and lower emissions vehicles. Encouraging research and development of more hybrids will motivate car manufacturers who are otherwise hesitant to invest in the technology for fear that customers will not buy their hybrids.147

5. **Create Milestones for Switching Over Federal Fleet Purchases**

In addition to the EISA proposal to give domestic manufacturers incentives for researching new technologies, the EISA also includes milestones for switching over federal fleet purchases.148 "Fleet" means "all automobiles manufactured by a manufacturer in a particular model year."149 The statutory milestones include a timeline and standards for federal agencies to reduce petroleum use and to increase use of alternative fuel consumption beginning in 2010.150 This way, the government sets an example for conserving energy by purchasing and using alternative fuel vehicles.

**SECTION VI: CONCLUSION**

The various incentive programs currently available for purchasing and manufacturing hybrids are undeniably successful and often comprise at least one factor in a consumer's decision to buy a hybrid vehicle.151 Yet, despite the number of hybrid owners who are happy to receive some benefit from buying a hybrid vehicle, there is concern that some of the incentive programs are either counterproductive or only narrowly beneficial. Lawmakers should thus limit incentives to situations where an increase in hybrid purchases

146. *Id.* (amending Energy Policy Act of 2005, § 712(a)(2)).
147. See Jacqueline Mitchell, *Gas Prices Up, But Drivers Not Switching to Hybrids*, DETROIT NEWS, May 2, 2007, at 1F (explaining manufacturers do not want to invest money in producing hybrids if sales are slow).
149. *Id.* § 104(g)(6)(A) (defining "fleet" in context of Energy Independence and Security Act).
150. *See id.* § 142 (amending Energy Policy and Conservation Act § 400FF, 42 U.S.C. § 6374 (2006)) (requiring decrease in petroleum use and increase in use of alternative fuel by federal agencies beginning in 2010). By 2014, "each federal agency shall achieve at least a 20 percent reduction in annual petroleum consumption and a 10 percent increase in annual alternative fuel consumption . . . ." *Id.* § 400FF(a)(2).
151. *See Sawyers, supra* note 26, at 28B (explaining incentives are factors beyond environmental concerns enticing consumers to buy hybrids).
does not potentially cause more harm to the environment, as in the case of HOV lane exemptions. 152

Retaining incentives that encourage consumers to purchase hybrid vehicles is, however, generally beneficial to the environment. 153 While independent factors, like the rising cost of gasoline or the concern for the environment, are often cited as a predominant reason for why consumers purchase hybrids, the incentives offered by the government, including tax breaks and the HOV exemption, are often cited as well. 154 If the government discontinues its incentives, it is highly possible that consumers would cease purchasing hybrids, and manufacturers would stop producing them. 155 Therefore, lawmakers should be wary of removing incentives that compel consumers to purchase this more expensive, but highly beneficial, technology.

Elizabeth Robbins*

152. For a discussion of possible repercussions of HOV exemption, see supra notes 85-99 and accompanying text.
153. For an explanation of why hybrids are environmentally friendly, see supra notes 25-29 and accompanying text.
154. For a discussion of reasons cited by consumers for purchasing hybrids, see supra notes 51-53, 89-91 and accompanying text.
155. See Mitchell, supra note 147 (demonstrating despite high gas prices, incentives to purchase hybrids not enough for everyone). For some consumers, the tax incentive is not high enough to offset the elevated price of a hybrid. See id.
* J.D. Candidate, 2009, Villanova University School of Law; B.A., 2006, University of Virginia.