

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 653**

Short Title: Cap Variable Rate of the Gasoline Excise Tax. (Public)

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Sponsors: Representatives Gibson; Brown, Faison, Howard, Hurley, Justice, McGee, Stiller, Underhill, and Wainwright.

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Referred to: Transportation, if favorable, Finance.

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March 15, 2007

A BILL TO BE ENTITLED

1 AN ACT TO STABILIZE THE MOTOR FUEL TAX BY IMPOSING A CAP ON  
2 THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX  
3 RATE AT ITS CURRENT RATE AND PROVIDING RELIEF FOR  
4 CONSUMERS BY PROVIDING FOR PRICE GOUGING INVESTIGATIONS BY  
5 THE ATTORNEY GENERAL.  
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 105-449.80(a) reads as rewritten:

9 "(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half  
10 cents (17 1/2¢) a gallon plus a variable wholesale component. The variable wholesale  
11 component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of  
12 the average wholesale price of motor fuel for the applicable base period, whichever is  
13 greater. In no case may the variable wholesale component be greater than twelve and  
14 four-tenths cents (12.4¢) a gallon.

15 The two base periods are six-month periods; one ends on September 30 and one ends  
16 on March 31. The Secretary must set the tax rate twice a year based on the wholesale  
17 price for each base period. A tax rate set by the Secretary using information for the base  
18 period that ends on September 30 applies to the six-month period that begins the  
19 following January 1. A tax rate set by the Secretary using information for the base  
20 period that ends on March 31 applies to the six-month period that begins the following  
21 July 1."

22 **SECTION 2.** G.S. 75-38 reads as rewritten:

23 **"§ 75-38. Prohibit excessive pricing during states of disaster.**

24 (a) It shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to  
25 sell or rent at retail during a state of disaster, in the area for which the state of disaster  
26 has been declared, any merchandise or services which are consumed or used as a direct  
27 result of an emergency or which are consumed or used to preserve, protect, or sustain  
28 life, health, safety, or comfort of persons or their property with the knowledge and

1 intent to charge a price that is unreasonably excessive under the circumstances. In  
2 determining whether a price is unreasonably excessive, it shall be considered whether:

- 3 (1) The price charged by the seller is attributable to additional costs  
4 imposed by the seller's supplier or other costs of providing the good or  
5 service during the state of disaster; and  
6 (2) The seller offered to sell or rent the merchandise or service at a price  
7 that was below the seller's average price in the preceding 60 days  
8 before the state of ~~disaster~~ disaster; and  
9 (3) The seller was pricing above market prices when no alternative seller  
10 was available.

11 If the seller did not sell or rent or offer to sell or rent the merchandise or service in  
12 question prior to the time the state of disaster was declared, the price at which the  
13 merchandise or service was generally available in the trade area shall be used as a factor  
14 in determining if the seller is charging an unreasonably excessive price.

15 (b) In the event the Attorney General investigates a complaint for a violation of  
16 this section and determines that the seller has not violated the provisions of this section  
17 and if the seller so requests, the Attorney General shall promptly issue a signed  
18 statement indicating that the Attorney General has not found a violation of this section.  
19 The Attorney General shall maintain the confidentiality of all evidence, testimony,  
20 documents, statements, or other results of an investigation under this section, including  
21 the names of the complainant and the individual, corporation, or other entity that is the  
22 subject of the investigation. Nothing herein shall be construed to prevent the  
23 presentation or disclosure of any information or evidence in an action or proceeding  
24 brought under this section or pursuant to an order from a court of competent  
25 jurisdiction.

26 (c) For the purposes of this section, the end of a state of disaster is the earlier of  
27 45 days or the termination of a natural or man-made disaster or emergency as declared  
28 in accordance with G.S. 166A-6 or G.S. 166A-8.

29 (d) The Office of the Governor shall maintain a mailing list of individuals who  
30 have requested, in writing, notice of the issuance of a declaration of a state of disaster or  
31 emergency. When the Office of the Governor declares a state of disaster or emergency,  
32 it must provide, by electronic or U.S. mail, a copy of the declaration to each individual  
33 on the list."

34 **SECTION 3.** G.S. 166A-4(1) reads as rewritten:

35 "(1) Disaster. – An occurrence or imminent threat of widespread or severe  
36 damage, injury, economic well-being, or loss of life or property  
37 resulting from any natural or man-made incidental, accidental, military  
38 or paramilitary cause."

39 **SECTION 4.** There is appropriated from the General Fund to the Highway  
40 Fund and Highway Trust Fund an appropriate amount of funds to offset the loss of  
41 revenue from capping the motor fuels excise tax.

42 **SECTION 5.** This act becomes effective July 1, 2007.