

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE BILL 2384**

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

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Sponsors: Representatives Gibson, Coates, Underhill, Goforth (Primary Sponsors); Alexander, B. Allen, L. Allen, Bell, Carney, Church, Coleman, Cunningham, England, Faison, Farmer-Butterfield, Fisher, Glazier, Hackney, Haire, Harrison, Hill, Holliman, Howard, Jeffus, Ed Jones, Lewis, Lucas, Luebke, McAllister, McLawhorn, Nye, Parmon, Pierce, Rapp, Saunders, Setzer, Spear, Steen, Tolson, Tucker, Warren, Weiss, Wilkins, Williams, Womble, Wray, and Yongue.

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Referred to: Finance.

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May 23, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

1       (a) It shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to  
2 sell or rent at retail during a state of disaster, in the area for which the state of disaster  
3 has been declared, any merchandise or services which are consumed or used as a direct  
4 result of an emergency or which are consumed or used to preserve, protect, or sustain  
5 life, health, safety, or comfort of persons or their property with the knowledge and  
6 intent to charge a price that is unreasonably excessive under the circumstances. In  
7 determining whether a price is unreasonably excessive, it shall be considered whether:

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

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

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

31       (c) For the purposes of this section, the end of a state of disaster is the earlier of  
32 45 days or the termination of a natural or man-made disaster or emergency as declared  
33 in accordance with G.S. 166A-6 or G.S. 166A-8.

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

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

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

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

4           **SECTION 5.** This act becomes effective July 1, 2006.