



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 469

AMENDMENT NO. A
(to be filled in by
Principal Clerk)

S469-ARI-85 [v.2]

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Amends Title [NO]
S469-CSSB-31 [v.3]

Date _____, 2017

Representative Bumgardner

1 moves to amend the bill on page 7, lines 45 and 46,
2 by inserting between those lines:

3
4
5 **"LIMIT LOCAL REGULATION OF ASPHALT PLANTS**

6 **SECTION 8.1** Article 21B of Chapter 143 of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 143-215.108B. Local ordinances regulating asphalt plants preempted.**

9 (a) It is the intent of the General Assembly to maintain a uniform system for regulation
10 of the construction and operation of asphalt plants, and to place limitations upon the exercise by
11 all units of local government in North Carolina of the power to regulate the construction and
12 operation of asphalt plants by means of ordinances, property restrictions, zoning regulations, or
13 otherwise. Notwithstanding any authority granted to counties, municipalities, or other local
14 authorities to adopt local ordinances, including those imposing taxes, fees, or charges or
15 regulating health, environment, or land use, all provisions of local ordinances, including those
16 regulating land use, adopted by counties, municipalities, or other local authorities that regulate
17 or have the effect of regulating the construction and operation of asphalt plants, within the
18 jurisdiction of a local government are invalidated and unenforceable, to the extent necessary to
19 effectuate the purposes of this Part, that place any restriction or condition not placed by a
20 permit issued pursuant to this Article upon the construction and operation of asphalt plants.

21 (b) As used in this section, "Commission" means the Environmental Management
22 Commission.

23 (c) If a local zoning or land-use ordinance imposes requirements, restrictions, or
24 conditions that are generally applicable to industrial development, including, but not limited to,
25 setback, buffer, and stormwater requirements, and an asphalt plant would be regulated under
26 the ordinance of general applicability, the operator of the proposed activities may petition the
27 Environmental Management Commission to review the matter. After receipt of a petition, the
28 Commission shall hold a hearing in accordance with the procedures in subsection (d) of this
29 section and shall determine whether or to what extent to preempt the local ordinance to allow
30 for the regulation of the construction and operation of asphalt plants.

31 (d) When a petition described in subsection (c) of this section has been filed with the
32 Environmental Management Commission, the Commission shall hold a public hearing to



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1 consider the petition. The public hearing shall be held in the affected locality within 60 days
2 after receipt of the petition by the Commission. The Commission shall give notice of the public
3 hearing by both of the following means:

4 (1) Publication in a newspaper or newspapers having general circulation in the
5 county or counties where the activities are to be conducted, once a week for
6 three consecutive weeks, the first notice appearing at least 30 days prior to
7 the scheduled date of the hearing.

8 (2) First-class mail to persons who have requested notice. The Commission shall
9 maintain a mailing list of persons who request notice in advance of the
10 hearing pursuant to this section. Notice by mail shall be complete upon
11 deposit of a copy of the notice in a postage-paid wrapper addressed to the
12 person to be notified at the address that appears on the mailing list
13 maintained by the Commission in a post office or official depository under
14 the exclusive care and custody of the United States Postal Service.

15 (e) Any interested person may appear before the Environmental Management
16 Commission at the hearing to offer testimony. In addition to testimony before the Commission,
17 any interested person may submit written evidence to the Commission for the Commission's
18 consideration. At least 20 days shall be allowed for receipt of written comment following the
19 hearing.

20 (f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the
21 extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that
22 are generally applicable to industrial development, including, but not limited to, setback,
23 buffer, and stormwater requirements, unless the Environmental Management Commission
24 makes a finding of fact to the contrary. The Commission shall determine whether or to what
25 extent to preempt local ordinances so as to allow the construction or operation of an asphalt
26 plant no later than 60 days after conclusion of the hearing. The Commission shall preempt a
27 local ordinance only if the Commission makes all of the following findings:

28 (1) That there is a local ordinance that would regulate the construction and
29 operation of asphalt plants.

30 (2) That all legally required State and federal permits or approvals have been
31 issued by the appropriate State and federal agencies or that all State and
32 federal permit requirements have been satisfied and that the permits or
33 approvals have been denied or withheld only because of the local ordinance.

34 (3) That local citizens and elected officials have had adequate opportunity to
35 participate in the permitting process.

36 (4) That the asphalt plant will not pose an unreasonable health or environmental
37 risk to the surrounding locality and that the operator has taken or consented
38 to take reasonable measures to avoid or manage foreseeable risks and to
39 comply to the maximum feasible extent with applicable local ordinances.

40 (g) If the Environmental Management Commission does not make all of the findings
41 under subsection (f) of this section, the Commission shall not preempt the challenged local
42 ordinance. The Commission's decision shall be in writing and shall identify the evidence
43 submitted to the Commission plus any additional evidence used in arriving at the decision.

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1 (h) The decision of the Environmental Management Commission shall be final, unless a
2 party to the action files a written appeal under Article 3 of Chapter 150B of the General
3 Statutes, as modified by this section, within 30 days of the date of the decision. The record on
4 appeal shall consist of all materials and information submitted to or considered by the
5 Commission, the Commission's written decision, a complete transcript of the hearing, the
6 specific findings required by subsection (f) of this section, and any minority positions on the
7 specific findings required by subsection (f) of this section. The scope of judicial review shall be
8 as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

9 (i) If the court reverses or modifies the decision of the Environmental Management
10 Commission, the judge shall set out in writing, which writing shall become part of the record,
11 the reasons for the reversal or modification.

12 (j) In computing any period of time prescribed or allowed by the procedure in this
13 section, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."
14

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____