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DATE: March 27, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: HB 1351

RELATING TO: Construction Materials/Mining

SPONSOR(S): Representative Arza

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
- (2) INSURANCE (CCC)
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

This bill repeals a law enacted by the 2000 Legislature giving the State Fire Marshal (SFM) sole and exclusive authority to regulate the use of explosives in mining activities for construction materials such as limestone and sand. In addition to its existing regulatory authority, the SFM was allowed to set standards or limits for ground vibration, frequency, intensity, blast pattern and air blast, as well as time, date, occurrence, and notice restrictions. Specifically, the statewide ground vibration limits to be set by the SFM must conform to certain U.S. Bureau of Mines standards. The new section of law also allowed the SFM to delegate monitoring and enforcement of its blasting regulations to local governments.

This bill has no direct fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Background

Large quantities of limestone aggregate and other materials that are mined in Florida are used in the construction of roads, highway embankments, and pavements. Mines in Dade County provide an estimated half of the limestone aggregate used by the state Department of Transportation, other governmental entities and the construction industries for their projects. The aggregate and other materials are mined using explosives.

The use of explosives in mining activities is regulated by the federal, state and, to a lesser extent, local governments. On the federal level, Title 30 of the U.S. Code and its various implementing regulations establish basic safety, health, certification, reporting, and environmental requirements for the use of explosives in mining operations.

In Florida, chapter 552, F.S., governs the requirements and the enforcement for the manufacture, distribution, and use of explosives. Chapter 4A-2, Florida Administrative Code, implements those laws. The Division of State Fire Marshal (SFM) within the Department of Insurance is responsible for enforcing this chapter. The SFM issues licenses for companies and individuals who are manufacturers/distributors, dealers, and users of explosives, and issues permits for blasters -- the persons who actually ignite the explosives. In addition, the SFM requires accurate record keeping of the use and storage of explosives, and adherence to minimum general safety standards. The SFM also can perform on-site inspections of explosive storage sites; investigate blasting scenes and storage facilities for explosives to determine compliance with statutes; and restrict the quantity and use of explosives at any location when it determines the use of such explosives is likely to cause injuries or property damage.

The SFM has not adopted rules establishing minimum setbacks between residential or commercial structures or buildings and the use of explosives, although among its safety provisions are distance setbacks related to the storage of explosives. And until the enactment of CS/SB 772 (chapter 00-266, Laws of Florida), the SFM had no rules related to limits on the ground vibration, air blast or flyrock from use of explosives. Essentially, the SFM responds on a complaint-by-complaint basis to specific complaints regarding the use of explosives near residential structures. Typically, the SFM has entered into stipulation agreements with the users of the explosives to establish conditions for their use such as placing limitations on the maximum ground vibrations relative to distance, restrictions on the time of day for the explosions, and other related conditions.

According to the SFM, restrictions for use of explosives relating to ground vibration, air blast, and flyrock are contained in the proposed Florida Fire Prevention Code, which will take effect statewide July 1, 2001. The proposed Florida Fire Prevention Code adopts standards for ground vibration, air blast, and flyrock for all blasting operations, as contained in the National Fire Protection Association's "Explosives Materials Code) (NFPA 495). These standards specifically address the prevention of collateral property damage based on the maximum ground vibration, peak particle velocity, and air blast relative to distance.

Another state agency, the Department of Environmental Protection, issues environmental resource permits and life-of-the-mine permits pursuant to its authority under chapters 373, 378 and 403, F.S., without which a mine company cannot operate. Although these chapters do not specifically regulate the use of explosives, the Department takes into consideration the impacts of all mine-related activities on Florida's air, water, land, and wildlife resources.

Finally, 17 counties and two cities have adopted ordinances relating to explosives and blasting activities for which permits must be secured from the local county or city in which the specific blasting operation takes place.

Last year, Dade County proposed additional restrictions on the number of blasts per week, on ground vibrations and on decibel levels from the blasts. One impetus for the proposed restrictions was complaints from homeowners in Northwest Dade County, near the Lake Belt rock mining and reclamation project, about property damage and noise from the mining companies' use of explosives. To air homeowners' concerns and collect data, the county also convened a Blasting Task Force.

The proposals were opposed by Dade mining interests and, later, by the Department of Transportation (DOT). According to DOT, the proposed restrictions could have resulted in a reduction in road-construction materials, thus delaying projects and increasing their costs.

2000 Legislative Enactment

During the closing days of the 2000 legislative session, an amendment to CS/SB 772 was adopted that pre-empted Miami-Dade County's proposed ordinance. The language created s. 552.30, F.S., giving the SFM sole and exclusive authority to regulate the use of explosives in mining activities for construction materials such as limestone and sand. In addition to its existing regulatory authority, the SFM was allowed to set standards or limits for ground vibration, frequency, intensity, blast pattern and air blast, as well as time, date, occurrence, and notice restrictions. Specifically, the statewide ground vibration limits to be set by the SFM must conform to certain U.S. Bureau of Mines standards. The new section of law also allowed the SFM to delegate monitoring and enforcement of its blasting regulations to local governments.

Over the summer, the SFM adopted an emergency rule (chapter 4ER00-4, F.A.C.) to assist in its implementation of the new s. 552.30, F.S. The emergency rule adopted by reference the 19 existing local ordinances, except to the extent that the ground vibration limits in those ordinances conflicted with the U.S. Bureau of Mines' standards. In September, the SFM readopted the emergency rule, which subsequently expired due to the 90-day limitation on emergency rules [s. 120.54(4), F.S.]

In early November, the SFM released a draft rule that added new reporting, permitting and blasting requirements. For example, the draft rule required a "pre-blast survey" be conducted of all structures within a specified distance of the blast site by an independent seismologist, a vibration or structural engineer, or a similarly qualified person. The "pre-blast survey" would have included complete documentation of all visible interior and exterior defects in the structures within the specified distance, and must be paid for by the person or entity planning to use the explosives.

The SFM was notified of separate intents to challenge the rule by attorneys representing a statewide mining industry group and a Brevard County quarry owner. The SFM has subsequently withdrawn the draft rule, but anticipates issuing a new draft rule.

Subsequent to the 2000 Legislative Session, in a letter to Governor Bush, the Miami-Dade Limestone Products Association, Inc., agreed to a standard of conduct relating to their activities in Dade County for a period of 1 year. In summary, the voluntary limitations provide:

- Limit peak particle velocity levels (ground vibration) to that experienced by an existing neighborhood within the Urban Development Boundary in the past 12 months. At no time and under no circumstances will these levels exceed the standards recommended by the expert retained by the Miami-Dade County Blasting Task Force;
- Limit frequency or blasting events experienced by a neighborhood within the Urban Development Boundary so that they are consistent with frequency and blasting events experienced by that neighborhood over the past 12 months, and at no time shall any permit holder exceed 3 blasts per week per use permit;
- A program of independent monitoring conducted by a firm selected by the Fire Marshal or the County Manager.
- Continue to work with explosives contractors and consultants to refine technology and blast designs to minimize ground vibration and air over pressure levels; and
- Modify language in the County Code to remove the presumption of "no damage" for certain levels of blasting, and let the facts of each case determine whether damage has or has not been caused by blasting.

Litigation

The Citizens Against Blasting homeowners group, whose core members live in northwestern Dade, in October filed their second class-action lawsuit in a year against Rinker Materials and other area mining companies. Both lawsuits allege the blasting conducted by the mining companies is damaging their homes.

On November 30, Miami-Dade County and Hernando County filed an amended complaint in the 11th Circuit Court alleging that CS/SB 772 (chapter 00-266, L.O.F.) violates Art. III, s. 6, of the Florida Constitution. Specifically, the plaintiffs allege:

- The legislation violates the constitutional requirement that an individual bill address a single subject. The short title of CS/SB 772 (chapter 00-266, L.O.F.) is an "act relating to the Department of Transportation." The majority of the bill addresses transportation-related issues. Section 30 of the bill created s. 552.30, F.S., which preempted local control of the use of explosives and blasting, and gave that control to the State Fire Marshal – which is a unit of the Department of Insurance.
- In addition, the plaintiffs argue that the legislation's title is defective. The title includes the following phrases: "creating s. 552.30, F.S., relating to construction materials mining activities; providing for the State Fire Marshal to establish certain limits..." The plaintiffs contend this was misleading and not specific.

- Finally, the plaintiffs express concerns that a copy of the amendment adding s. 552.30, F.S. to CS/SB 772 was not timely filed under House rules, nor was it available to the public until after it was passed.

C. EFFECT OF PROPOSED CHANGES:

This bill repeals a law enacted by the 2000 Legislature giving the State Fire Marshal (SFM) sole and exclusive authority to regulate the use of explosives in mining activities for construction materials such as limestone and sand. In addition to its existing regulatory authority, the SFM was allowed to set standards or limits for ground vibration, frequency, intensity, blast pattern and air blast, as well as time, date, occurrence, and notice restrictions. Specifically, the statewide ground vibration limits to be set by the SFM must conform to certain U.S. Bureau of Mines standards. The new section of law also allowed the SFM to delegate monitoring and enforcement of its blasting regulations to local governments.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 552.30, F.S., is repealed.

Section 2. An effective date of upon becoming a law is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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