

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

Representative(s) Attkisson and Wiles offered the following:

**Amendment to Amendment (413501) (with title amendment)**

On page 1, between lines 16 & 17,

insert:

Section 1. Section 380.52, Florida Statutes, is created to read:

380.52 Short title.--Sections 380.52-380.64 may be cited as the "Construction Materials Mining Administrative Recovery Act."

Section 2. Section 380.54, Florida Statutes, is created to read:

380.54 Legislative findings; public purpose.--The Legislature finds that:

(1) Construction materials mining requires the use of explosives to fracture the material prior to excavation.

(2) The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site.

(3) It is in the interest of the public to provide a

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1 specific administrative remedy for complaints concerning the  
2 use of explosives in construction materials mining.

3 Section 3. Section 380.56, Florida Statutes, is  
4 created to read:

5 380.56 Exclusive jurisdiction; Division of  
6 Administrative Hearings.--

7 (1) The Division of Administrative Hearings has  
8 exclusive jurisdiction over all claims for damage to real or  
9 personal property caused by the use of explosives in  
10 connection with construction materials mining. This chapter  
11 does not affect any claim seeking recovery for personal  
12 injury, emotional distress, or punitive damages. Any cause of  
13 action involving both a claim for damage to real or personal  
14 property and another claim not addressed by this chapter must  
15 be bifurcated so that any claim seeking recovery for damage to  
16 real or personal property is adjudicated by the Division of  
17 Administrative Hearings.

18 (2) Notwithstanding s. 552.25, the review process  
19 contained in this chapter preempts any claims, recovery, or  
20 similar procedure of any municipality, agency, board, county,  
21 or other subdivision, entity, or special district of the state  
22 which would otherwise address a claim for damage caused by the  
23 use of explosives in connection with construction materials  
24 mining.

25 Section 4. Section 380.58, Florida Statutes, is  
26 created to read:

27 380.58 Security requirement.--

28 (1) As a prerequisite to obtaining or renewing a user  
29 license under s. 552.091(5)(a), a person who uses explosives  
30 in connection with construction materials mining must post and  
31 maintain a bond or letter of credit as security. Evidence that

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1 the bond has been posted and maintained in compliance with  
2 this section must be maintained by any person who uses  
3 explosives in connection with construction mining as part of  
4 the mandatory requirements for the maintenance of records  
5 under s. 552.112. Such person must maintain a completed form,  
6 in a format approved by the Division of State Fire Marshal of  
7 the Department of Insurance, which shows the amount and  
8 location of the bond or identifies the bond surety and current  
9 bond value.

10 (2) The bond or letter of credit must be in an amount  
11 of at least \$100,000, notwithstanding an award made by an  
12 administrative law judge under s. 380.60(6). If the user of  
13 explosives has not been identifies as a respondent in any  
14 pending claim for damages under this chapter, and if no  
15 renewal of the user license is sought, the bond required under  
16 this section may be released upon the expiration of the user  
17 license under s. 552.091(6)

18 (3) The State Fire Marshal may adopt rules to  
19 administer this section.

20 Section 5. Section 380.60, Florida Statutes, is  
21 created to read:

22 380.60 Administrative remedy for alleged damage due to  
23 the use of explosives in connection with construction  
24 materials mining.--

25 (1) A person who seeks recovery of damages resulting  
26 from the use of explosives in connection with construction  
27 materials mining must file a petition with the Division of  
28 Administrative Hearings on a form provided by the division and  
29 accompanied by a filing fee of \$100 within 4 years after the  
30 occurrence of the alleged damage.

31 (2) Upon receipt of the petition and accompanying

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1 filling fee, the Division of Administrative Hearings shall,  
2 within 15 days, assign the matter to an administrative law  
3 judge.

4 (3) The administrative law judge shall set the matter  
5 for hearing as soon thereafter as possible at a location in  
6 the county where the alleged damage occurred. However, a  
7 hearing may not be scheduled sooner than 30 days after the  
8 date the respondent is served with the petition claiming  
9 damages.

10 (4) The petition claiming damages must include:

11 (a) The name and address of the petitioner;

12 (b) The name and address of the respondent;

13 (c) The time, date, and place of the use of explosives  
14 which is alleged to have resulted in damage to the petitioner;  
15 and

16 (d) A description of the damage caused and the amount  
17 sought for recovery.

18 (5) Unless otherwise provided in this chapter, the  
19 procedure for recovery provided in this act shall be governed  
20 by chapter 120 and the uniform rules of procedure described in  
21 s. 120.54(5).

22 (6) If the administrative law judge finds that the  
23 substantial competent evidence presented demonstrates that the  
24 petitioner's damages were caused by the respondent's use of  
25 explosives, the administrative law judge shall set forth in a  
26 final order precise findings as to the damages attributable to  
27 the respondent and shall direct the respondent to pay such  
28 damages within 30 days after the final order, unless the  
29 matter is appealed in accordance with s. 380.62. If the  
30 respondent fails to pay the damages awarded in a timely  
31 manner, the petitioner may request and the administrative law

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1 judge may order that the petitioner be paid from the security  
2 posted by the respondent under s. 380.58 for the amount of  
3 damages awarded. To the extent that the security does not  
4 satisfy the damage award, the respondent shall be awarded a  
5 judgment directly against the respondent for unrecovered  
6 damages.

7 (7) If the administrative law judge finds that the  
8 substantial competent evidence presented demonstrates that the  
9 petitioner's alleged damages were not caused by the  
10 respondent's use of explosives, the administrative law judge  
11 shall set forth in a final order precise findings as to the  
12 lack of responsibility of the respondent.

13 (8) The prevailing party is entitled to recovery of  
14 reasonable costs for the administrative hearing, including  
15 reasonable attorney's fees and expert-witness fees.

16 Section 6. Section 380.62, Florida Statutes, is  
17 created to read:

18 380.62 Appeal.--The petitioner or respondent may  
19 appeal the decision of the administrative law judge to the  
20 district court of appeal by filing a notice with the Division  
21 of Administrative Hearings within 30 days after the date of  
22 rendition of the decision, as provided by the Florida Rules of  
23 Appellate Procedure. The payment of any award shall be stayed  
24 during the pendency of an appeal.

25 Section 7. Section 380.64, Florida Statutes, is  
26 created to read:

27 380.64 Prior claims.--Sections 380.52-380.64 do not  
28 affect any claim filed in any tribunal before the effective  
29 date of this act.

30 Section 8. Subsection (1) of section 552.30, Florida  
31 Statutes, is amended to read:



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1 claims for damages to real or personal property  
2 caused by the use of explosives in connection  
3 with construction materials mining; creating s.  
4 380.58, F.S.; requiring a person obtaining or  
5 renewing a license to use explosives to post  
6 and maintain a bond or letter of credit of a  
7 specified amount; authorizing the State Fire  
8 Marshal to adopt rules; creating s. 380.60,  
9 F.S.; providing a procedures for seeking  
10 recovery of damages resulting from the use of  
11 explosives in connection with construction  
12 materials mining; providing a standard of  
13 evidence; providing for final orders; creating  
14 s. 380.62, F.S.; providing for an order of the  
15 administrative law judge to be appealed to the  
16 district court of appeal; creating s. 380.64,  
17 F.S.; providing that ss. 380.42-380.64 do not  
18 affect any prior claim; amending s. 552.30,  
19 F.S.; revising provisions governing  
20 construction materials mining activities;

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