

Bill No. CS for CS for SB's 662 & 232

Amendment No. ____ Barcode 303092

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

3 Section 588. Section 552.36, Florida Statutes, is
4 created to read:

5 552.36 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 589. Section 552.38, Florida Statutes, is
26 created to read:

27 552.38 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. 552.40(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 590. Section 552.40, Florida Statutes, is
21 created to read:

22 552.40 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 60 days 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. 552.42. 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. 552.38 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 591. Section 552.42, Florida Statutes, is
17 created to read:

18 552.42 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 592. Section 552.44, Florida Statutes, is
26 created to read:

27 552.44 Prior claims.--This act does not affect any
28 claim filed in any tribunal before the effective date of this
29 act.

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31 (Redesignate subsequent sections.)

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 8, line 4, after the first semicolon,

4

5 insert:

6 amending s. 235.06, F.S.; requiring the State
7 Fire Marshal to adopt uniform standards as
8 provided in s. 633.022(1)(b), F.S.; providing
9 for enforcement and administration of such
10 standards by local fire officials; prescribing
11 conditions for conducting firesafety
12 inspections; prescribing duties of local fire
13 officials in providing a plan of action and a
14 schedule for correction of deficiencies;
15 requiring the State Fire Marshal to adopt and
16 administer rules prescribing specified
17 standards for the safety and health of
18 occupants of educational and ancillary plants;
19 creating s. 552.32, F.S.; providing a short
20 title; creating s. 552.34, F.S.; providing
21 legislative findings; creating s. 552.36, F.S.;
22 providing that the Division of Administrative
23 Hearings has exclusive jurisdiction over all
24 claims for damages to real or personal property
25 caused by the use of explosives in connection
26 with construction materials mining; creating s.
27 552.38, F.S.; requiring a person obtaining or
28 renewing a license to use explosives to post
29 and maintain a bond or letter of credit of a
30 specified amount; authorizing the State Fire
31 Marshal to adopt rules; creating s. 552.40,

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1 F.S.; providing a procedures for seeking
2 recovery of damages resulting from the use of
3 explosives in connection with construction
4 materials mining; providing a standard of
5 evidence; providing for final orders; creating
6 s. 552.42, F.S.; providing for an order of the
7 administrative law judge to be appealed to the
8 district court of appeal; creating s. 552.44,
9 F.S.; providing that the act does not affect
10 any prior claim;

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