

By Senators Smith and Pruitt

14-262A-03

1 A bill to be entitled
2 An act relating to mining activities; amending
3 s. 552.30, F.S.; redefining the term
4 "construction materials mining activities";
5 creating ss. 552.32-552.44, F.S.; providing a
6 short title; providing legislative findings and
7 public purpose; providing that the Division of
8 Administrative Hearings has exclusive
9 jurisdiction over certain claims for damages
10 relating to the use of explosives in connection
11 with construction materials mining activities;
12 requiring a person who uses explosives in
13 connection with such activities to post
14 security in a specified amount for a specified
15 period; providing for rulemaking by the State
16 Fire Marshal; providing for an administrative
17 remedy; providing procedures for mediation and
18 for formal hearings; allowing recovery of
19 certain costs and attorney's fees, with
20 exceptions; providing for appeals; providing
21 applicability; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (1) of section 552.30, Florida
26 Statutes, is amended to read:

27 552.30 Construction materials mining activities.--

28 (1) Notwithstanding the provisions of s. 552.25, the
29 State Fire Marshal shall have the sole and exclusive authority
30 to promulgate standards, limits, and regulations regarding the
31 use of explosives in conjunction with construction materials

1 mining activities. Such authority to regulate use shall
2 include, directly or indirectly, the operation, handling,
3 licensure, or permitting of explosives and setting standards
4 or limits, including, but not limited to, ground vibration,
5 frequency, intensity, blast pattern, air blast and time, date,
6 occurrence, and notice restrictions. As used in this section,
7 "construction materials mining activities" means the
8 extraction of limestone and sand suitable for production of
9 construction aggregates, sand, cement, and road base materials
10 for shipment offsite by any person or company primarily
11 engaged in the commercial mining of any such natural
12 resources.

13 Section 2. Section 552.32, Florida Statutes, is
14 created to read:

15 552.32 Short title.--Sections 552.32-552.44 may be
16 cited as the "Florida Construction Materials Mining Activities
17 Administrative Recovery Act."

18 Section 3. Section 552.34, Florida Statutes, is
19 created to read:

20 552.34 Legislative findings; public purpose.--The
21 Legislature finds and declares that:

22 (1) Construction materials mining activities require
23 the use of explosives to fracture the material prior to
24 excavation.

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

28 (3) It is in the best interests of the public to
29 provide a specific administrative remedy for complaints
30 related to the use of explosives in construction materials
31 mining activities.

1 Section 4. Section 552.36, Florida Statutes, is
2 created to read:

3 552.36 Exclusive jurisdiction; Division of
4 Administrative Hearings.--

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

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

23 Section 5. Section 552.38, Florida Statutes, is
24 created to read:

25 552.38 Security requirement.--

26 (1) As a prerequisite to obtaining or renewing a valid
27 user license as required by s. 552.091(5)(a), a person who
28 uses explosives in connection with construction materials
29 mining activities must post and maintain a bond or letter of
30 credit as security during the period required under subsection
31 (2). Evidence that the bond has been posted and maintained in

1 compliance with this section must be maintained by any user of
2 explosives in connection with construction materials mining
3 activities as part of the mandatory record maintenance
4 requirements of s. 552.112. The person must maintain, in a
5 format approved by the Division of State Fire Marshal of the
6 Department of Financial Services, a completed form that shows
7 the amount and location of the bond or identifies the bond
8 surety and the current bond value.

9 (2) The bond or letter of credit required under
10 subsection (1) must be in an amount not less than \$100,000,
11 notwithstanding an award made by an administrative law judge
12 under s. 552.40(7). If the user of explosives has not been
13 identified as a respondent in any pending claim for damages
14 under this chapter, and if renewal of the user license is not
15 sought, the bond required under this section may be released
16 upon the expiration of the user license pursuant to s.
17 552.091(6) or 181 days after the final use of explosives under
18 the license, whichever occurs later.

19 (3) The State Fire Marshal may adopt rules for the
20 administration of this section.

21 Section 6. Section 552.40, Florida Statutes, is
22 created to read:

23 552.40 Administrative remedy for alleged damage due to
24 the use of explosives in connection with construction
25 materials mining activities.--

26 (1) A person may initiate an administrative proceeding
27 to recover damages resulting from the use of explosives in
28 connection with construction materials mining activities by
29 filing a petition with the Division of Administrative Hearings
30 on a form provided by the division and accompanied by a filing
31 fee of \$100 within 180 days after the occurrence of the

1 alleged damage. If the petitioner submits an affidavit stating
2 that the petitioner's annual income is less than 150 percent
3 of the applicable federal poverty guideline published in the
4 Federal Register by the United States Department of Health and
5 Human Services, the \$100 filing fee must be waived.

6 (2) The petition must include:

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

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

9 (c) The approximate time, date, and place of the use
10 of explosives which is alleged to have resulted in damage to
11 the petitioner; and

12 (d) A description of the damage caused and the amount
13 sought for recovery.

14 (3) Within 5 business days after the Division of
15 Administrative Hearings receives a petition, the division
16 shall issue and serve on the petitioner and the respondent an
17 initial order that assigns the case to a specific
18 administrative law judge and provides general information
19 regarding the practice and procedure before the division. The
20 initial order must advise that a summary hearing is available
21 upon the agreement of the parties under subsection (6) and
22 must briefly describe the expedited time sequences, limited
23 discovery, and final order provisions of the summary
24 procedure. The initial order must also contain a statement
25 advising the petitioner and the respondent that a mandatory,
26 nonbinding mediation is required before a summary
27 administrative hearing or a formal administrative hearing may
28 be held.

29 (4) The administrative judge shall issue an order
30 directing mediation under Rule 1700 et seq., Florida Rules of
31 Civil Procedure. The parties shall jointly select a mediator

1 and the location of mediation. If the parties fail to do so
2 within 30 days after the order for mediation is issued, the
3 administrative law judge shall designate the mediator and the
4 location of mediation. Petitioner and respondent shall each
5 pay one-half of the cost of mediation. If the petitioner's
6 annual income is less than 150 percent of the applicable
7 federal poverty guideline published in the Federal Register by
8 the United States Department of Health and Human Services, the
9 respondent shall bear the full cost of mediation. The
10 mediation must be concluded within 60 days after the date of
11 designation of the mediator unless the parties agree upon a
12 different date.

13 (5) If the parties have not reached a settlement
14 within 30 days after the conclusion of the mediation, the
15 administrative law judge shall set the matter for formal
16 administrative hearing as soon thereafter as possible at a
17 location in the county where the alleged damage occurred.
18 However, a formal administrative hearing may not be scheduled
19 sooner than 30 days after the conclusion of the mediation.

20 (6) In lieu of proceeding directly to a formal
21 administrative hearing scheduled in accordance with subsection
22 (5), upon agreement of the parties, the parties may, within 15
23 days after the conclusion of unsuccessful mediation, file a
24 motion for summary hearing. The summary hearing must be held
25 at a location in the county where the alleged damage occurred,
26 and all procedural requirements related to the hearing must be
27 governed by s. 120.574 and any rules implementing that
28 section.

29 (7) If the administrative law judge finds that the
30 preponderance of the evidence presented demonstrates that the
31 petitioner's damages were caused by the respondent's use of

1 explosives, the administrative law judge shall set forth in a
2 final order precise findings as to the damages attributable to
3 the respondent and shall direct the respondent to pay damages
4 in an amount supported by the preponderance of the evidence
5 presented within 30 days after the final order is issued,
6 unless the matter is appealed in accordance with s. 552.42. If
7 the respondent fails to pay the damages within 30 days after
8 the final order is issued or within 30 days after the entry of
9 an appellate mandate affirming a final order awarding damages,
10 the petitioner may request and the administrative law judge
11 may order that the petitioner be paid from the security posted
12 by the respondent under s. 552.38 the amount of the damages
13 awarded. To the extent the security does not satisfy the full
14 amount of the damages awarded, the administrative law judge
15 may enter a judgment directly against the respondent for the
16 amount of the difference.

17 (8) If the administrative law judge finds that the
18 preponderance of the evidence presented demonstrates that the
19 petitioner's alleged damages were not caused by the
20 respondent's use of explosives, the administrative law judge
21 shall set forth in a final order precise findings as to the
22 lack of responsibility of the respondent.

23 (9) The prevailing party is entitled to recovery of
24 reasonable taxable costs for the administrative proceedings,
25 including expert witness fees and reasonable attorney's fees,
26 not to exceed \$15,000 in the aggregate. This \$15,000 cap on
27 the combined amount of awardable costs and fees does not apply
28 if the administrative law judge determines that the claim or
29 defense of the nonprevailing party:

30 (a) Was not supported by the material facts necessary
31 to establish the claim or defense;

1 (b) Would not be supported by the application of
2 then-existing law to those material facts; or

3 (c) Was brought or advanced primarily to harass or
4 cause unnecessary delay, for frivolous purposes, or to
5 needlessly increase the cost incurred by the opposition.

6
7 The losing party has up to 120 days to pay the total amount of
8 attorney's fees and taxable costs assessed. This subsection
9 does not apply to a petitioner who is the nonprevailing party
10 if the petitioner's annual income is less than 150 percent of
11 the applicable federal poverty guideline published in the
12 Federal Register by the United States Department of Health and
13 Human Services.

14 (10) Except as otherwise provided in this chapter, the
15 procedure for the administrative proceedings provided by this
16 act must be governed by the uniform rules of procedure for
17 decisions determining substantial interests which are
18 authorized by s. 120.54(5), notwithstanding the fact that
19 those rules implement provisions of chapter 120 which are
20 applicable to proposed or final agency action.

21 Section 7. Section 552.42, Florida Statutes, is
22 created to read:

23 552.42 Appeal.--The petitioner or the respondent may
24 appeal the decision of the administrative law judge to the
25 district court of appeal with jurisdiction over the county
26 where the hearing was held by filing a notice, accompanied by
27 the required filing fee, as provided by the Florida Rules of
28 Appellate Procedure. The payment of any award shall be stayed
29 during the pendency of an appeal.

30 Section 8. Section 552.44, Florida Statutes, is
31 created to read:

