

By the Committee on Banking and Insurance; and Senators Smith, Pruitt, Geller and Diaz de la Portilla

311-1883-03

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          providing for filing fees except in cases of  
13          indigence; designating a trust fund for deposit  
14          of filing fees; requiring a person who uses  
15          explosives in connection with such activities  
16          to post security in a specified amount for a  
17          specified period; providing for rulemaking by  
18          the State Fire Marshal; providing for an  
19          administrative remedy; providing procedures for  
20          mediation and for formal hearings; allowing  
21          recovery of certain costs and attorney's fees,  
22          with exceptions; providing for appeals;  
23          providing applicability; providing an effective  
24          date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28           Section 1. Subsection (1) of section 552.30, Florida  
29 Statutes, is amended to read:

30           552.30 Construction materials mining activities.--

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1           (1) Notwithstanding the provisions of s. 552.25, the  
2 State Fire Marshal shall have the sole and exclusive authority  
3 to promulgate standards, limits, and regulations regarding the  
4 use of explosives in conjunction with construction materials  
5 mining activities. Such authority to regulate use shall  
6 include, directly or indirectly, the operation, handling,  
7 licensure, or permitting of explosives and setting standards  
8 or limits, including, but not limited to, ground vibration,  
9 frequency, intensity, blast pattern, air blast and time, date,  
10 occurrence, and notice restrictions. As used in this section,  
11 "construction materials mining activities" means the  
12 extraction of limestone and sand suitable for production of  
13 construction aggregates, sand, cement, and road base materials  
14 for shipment offsite by any person or company primarily  
15 engaged in the commercial mining of any such natural  
16 resources.

17           Section 2. Section 552.32, Florida Statutes, is  
18 created to read:

19           552.32 Short title.--Sections 552.32-552.44 may be  
20 cited as the "Florida Construction Materials Mining Activities  
21 Administrative Recovery Act."

22           Section 3. Section 552.34, Florida Statutes, is  
23 created to read:

24           552.34 Legislative findings; public purpose.--The  
25 Legislature finds and declares that:

26           (1) Construction materials mining activities require  
27 the use of explosives to fracture the material prior to  
28 excavation.

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

1           (3) It is in the best interests of the public to  
2 provide a specific administrative remedy for complaints  
3 related to the use of explosives in construction materials  
4 mining activities.

5           Section 4. Section 552.36, Florida Statutes, is  
6 created to read:

7           552.36 Exclusive jurisdiction; Division of  
8 Administrative Hearings.--

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

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

27           Section 5. Section 552.38, Florida Statutes, is  
28 created to read:

29           552.38 Security requirement.--

30           (1) As a prerequisite to obtaining or renewing a valid  
31 user license as required by s. 552.091(5)(a), a person who

1 uses explosives in connection with construction materials  
2 mining activities must post and maintain a bond or letter of  
3 credit as security during the period required under subsection  
4 (2). Evidence that the bond has been posted and maintained in  
5 compliance with this section must be maintained by any user of  
6 explosives in connection with construction materials mining  
7 activities as part of the mandatory record maintenance  
8 requirements of s. 552.112. The person must maintain, in a  
9 format approved by the Division of State Fire Marshal of the  
10 Department of Financial Services, a completed form that shows  
11 the amount and location of the bond or identifies the bond  
12 surety and the current bond value.

13 (2) The bond or letter of credit required under  
14 subsection (1) must be in an amount not less than \$100,000,  
15 notwithstanding an award made by an administrative law judge  
16 under s. 552.40(7). If the user of explosives has not been  
17 identified as a respondent in any pending claim for damages  
18 under this chapter, and if renewal of the user license is not  
19 sought, the bond required under this section may be released  
20 upon the expiration of the user license pursuant to s.  
21 552.091(6) or 181 days after the final use of explosives under  
22 the license, whichever occurs later.

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

25 Section 6. Section 552.40, Florida Statutes, is  
26 created to read:

27 552.40 Administrative remedy for alleged damage due to  
28 the use of explosives in connection with construction  
29 materials mining activities.--

30 (1) A person may initiate an administrative proceeding  
31 to recover damages resulting from the use of explosives in

1 connection with construction materials mining activities by  
2 filing a petition with the Division of Administrative Hearings  
3 on a form provided by the division and accompanied by a filing  
4 fee of \$100 within 180 days after the occurrence of the  
5 alleged damage. If the petitioner submits an affidavit stating  
6 that the petitioner's annual income is less than 150 percent  
7 of the applicable federal poverty guideline published in the  
8 Federal Register by the United States Department of Health and  
9 Human Services, the \$100 filing fee must be waived.

10 (2) The petition must include:

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

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

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

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

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

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1 administrative hearing or a formal administrative hearing may  
2 be held.

3 (4) The administrative judge shall issue an order  
4 directing mediation under Rule 1700 et seq., Florida Rules of  
5 Civil Procedure. The parties shall jointly select a mediator  
6 and the location of mediation. If the parties fail to do so  
7 within 30 days after the order for mediation is issued, the  
8 administrative law judge shall designate the mediator and the  
9 location of mediation. Petitioner and respondent shall each  
10 pay one-half of the cost of mediation. If the petitioner's  
11 annual income is less than 150 percent of the applicable  
12 federal poverty guideline published in the Federal Register by  
13 the United States Department of Health and Human Services, the  
14 respondent shall bear the full cost of mediation. The  
15 mediation must be concluded within 60 days after the date of  
16 designation of the mediator unless the parties agree upon a  
17 different date.

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

25 (6) In lieu of proceeding directly to a formal  
26 administrative hearing scheduled in accordance with subsection  
27 (5), upon agreement of the parties, the parties may, within 15  
28 days after the conclusion of unsuccessful mediation, file a  
29 motion for summary hearing. The summary hearing must be held  
30 at a location in the county where the alleged damage occurred,  
31 and all procedural requirements related to the hearing must be

1 governed by s. 120.574 and any rules implementing that  
2 section.

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

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

28 (9) The prevailing party is entitled to recovery of  
29 reasonable taxable costs for the administrative proceedings,  
30 including expert witness fees and reasonable attorney's fees,  
31 not to exceed \$15,000 in the aggregate. This \$15,000 cap on

1 the combined amount of awardable costs and fees does not apply  
2 if the administrative law judge determines that the claim or  
3 defense of the nonprevailing party:

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

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

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

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

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

26 (11) The filing fees paid pursuant to subsection (1)  
27 shall be deposited into the Administrative Trust Fund of the  
28 Division of Administrative Hearings to defray the expenses and  
29 costs associated with the administration of ss. 552.32-552.44.

30 Section 7. Section 552.42, Florida Statutes, is  
31 created to read:

