

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), or obtaining or

1 renewing a valid license or permit under s. 552.30, a person  
2 who uses explosives in connection with construction materials  
3 mining activities must post and maintain a bond or letter of  
4 credit as security as required under subsection (2). Evidence  
5 that the bond has been posted and maintained in compliance  
6 with this section must be maintained by any licensee or  
7 permitholder for the use of explosives in connection with  
8 construction materials mining activities as part of the  
9 mandatory record maintenance requirements of s. 552.112. The  
10 person must maintain, in a format approved by the Division of  
11 State Fire Marshal of the Department of Financial Services, a  
12 completed form that shows the amount and location of the bond  
13 or identifies the bond surety and the current bond value.

14 (2) The bond or letter of credit required under  
15 subsection (1) must be in an amount not less than \$100,000,  
16 notwithstanding an award made by an administrative law judge  
17 under s. 552.40(7). In the case of a multiple licenseholder or  
18 multiple permitholder, a single bond in the aggregate amount  
19 of not less than \$100,000 may be provided as security for the  
20 individual permits or licenses. If the user of explosives has  
21 not been identified as a respondent in any pending claim for  
22 damages under this chapter, and if renewal of the license or  
23 permit is not sought, the bond required under this section may  
24 be released upon the expiration of the license or permit or  
25 181 days after the final use of explosives under the license,  
26 whichever occurs later, if the bond to be released is not  
27 security for other permits.

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

30 Section 6. Section 552.40, Florida Statutes, is  
31 created to read:

1           552.40 Administrative remedy for alleged damage due to  
2 the use of explosives in connection with construction  
3 materials mining activities.--

4           (1) A person may initiate an administrative proceeding  
5 to recover damages resulting from the use of explosives in  
6 connection with construction materials mining activities by  
7 filing a petition with the Division of Administrative Hearings  
8 on a form provided by the division and accompanied by a filing  
9 fee of \$100 within 180 days after the occurrence of the  
10 alleged damage. If the petitioner submits an affidavit stating  
11 that the petitioner's annual income is less than 150 percent  
12 of the applicable federal poverty guideline published in the  
13 Federal Register by the United States Department of Health and  
14 Human Services, the \$100 filing fee must be waived.

15           (2) The petition must include:

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

17           (b) The name and address of the respondent, including  
18 the applicable user licenseholder under s. 552.091(5) and  
19 permitholder under s. 552.30;

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

23           (d) A description of the damage caused and the amount  
24 sought for recovery.

25           (3) Within 5 business days after the Division of  
26 Administrative Hearings receives a petition, the division  
27 shall issue and serve on the petitioner and the respondent an  
28 initial order that assigns the case to a specific  
29 administrative law judge and provides general information  
30 regarding the practice and procedure before the division. The  
31 initial order must advise that a summary hearing is available

1 upon the agreement of the parties under subsection (6) and  
2 must briefly describe the expedited time sequences, limited  
3 discovery, and final order provisions of the summary  
4 procedure. The initial order must also contain a statement  
5 advising the petitioner and the respondent that a mandatory,  
6 nonbinding mediation is required before a summary  
7 administrative hearing or a formal administrative hearing may  
8 be held.

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

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

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1           (6) In lieu of proceeding directly to a formal  
2 administrative hearing scheduled in accordance with subsection  
3 (5), upon agreement of the parties, the parties may, within 15  
4 days after the conclusion of unsuccessful mediation, file a  
5 motion for summary hearing. The summary hearing must be held  
6 at a location in the county where the alleged damage occurred,  
7 and all procedural requirements related to the hearing must be  
8 governed by s. 120.574 and any rules implementing that  
9 section.

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

29           (8) If the administrative law judge finds that the  
30 preponderance of the evidence presented demonstrates that the  
31 petitioner's alleged damages were not caused by the

1 respondent's use of explosives, the administrative law judge  
2 shall set forth in a final order precise findings as to the  
3 lack of responsibility of the respondent.

4 (9) The prevailing party is entitled to recover  
5 taxable costs, including reasonable expert witness fees and  
6 any incidental administrative costs directly associated with  
7 the case. The prevailing party is entitled to an award of  
8 reasonable attorney's fees if the administrative law judge  
9 determines that the claim or defense of the nonprevailing  
10 party:

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

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

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

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19 The losing party has up to 120 days to pay the total amount of  
20 attorney's fees and taxable costs assessed. This subsection  
21 does not apply to a petitioner who is the nonprevailing party  
22 if the petitioner's annual income is less than 150 percent of  
23 the applicable federal poverty guideline published in the  
24 Federal Register by the United States Department of Health and  
25 Human Services.

26 (10) Except as otherwise provided in this chapter, the  
27 procedure for the administrative proceedings provided by this  
28 act must be governed by the uniform rules of procedure for  
29 decisions determining substantial interests which are  
30 authorized by s. 120.54(5), notwithstanding the fact that  
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1 those rules implement provisions of chapter 120 which are  
2 applicable to proposed or final agency action.

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

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

9 552.42 Appeal.--The petitioner or the respondent may  
10 appeal the final order of the administrative law judge to the  
11 district court of appeal with jurisdiction over the county  
12 where the hearing was held by filing a notice, accompanied by  
13 the required filing fee, as provided by the Florida Rules of  
14 Appellate Procedure. The payment of any award shall be stayed  
15 during the pendency of an appeal.

16 Section 8. Section 552.44, Florida Statutes, is  
17 created to read:

18 552.44 Prior claims.--This act does not affect any  
19 claim filed in any tribunal before the effective date of this  
20 act.

21 Section 9. This act shall take effect upon becoming a  
22 law.

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