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A bill to be entitled
 An act relating to mining activities; amending s. 552.30, F.S.; redefining the term "construction materials mining activities"; creating ss. 552.32-552.44, F.S.; providing a popular name; providing legislative findings and public purpose; providing that the Division of Administrative Hearings has exclusive jurisdiction over certain claims for damages relating to the use of explosives in connection with construction materials mining activities; providing for filing fees except incases of indigence; providing for deposit of filing fees; requiring a person who uses explosives in connection with such activities to post security in a specified amount for a specified period; providing for rulemaking by the State Fire Marshal; providing for an administrative remedy; providing procedures for mediation and for formal hearings; allowing recovery of certain costs and attorney's fees, with exceptions; providing for appeals; providing applicability; providing an effective date.

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

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

552.30 Construction materials mining activities.--
 (1) Notwithstanding the provisions of s. 552.25, the State Fire Marshal shall have the sole and exclusive authority to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with construction materials mining activities. Such authority to regulate use shall include,



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31 directly or indirectly, the operation, handling, licensure, or
 32 permitting of explosives and setting standards or limits,
 33 including, but not limited to, ground vibration, frequency,
 34 intensity, blast pattern, air blast and time, date, occurrence,
 35 and notice restrictions. As used in this section, "construction
 36 materials mining activities" means the extraction of limestone
 37 and sand suitable for production of construction aggregates,
 38 sand, cement, and road base materials for shipment offsite by
 39 any person or company primarily engaged in the commercial mining
 40 of any such natural resources.

41 Section 2. Section 552.32, Florida Statutes, is created to
 42 read:

43 552.32 Short title.--Sections 552.32-552.44 may be cited
 44 as the "Florida Construction Materials Mining Activities
 45 Administrative Recovery Act."

46 Section 3. Section 552.34, Florida Statutes, is created to
 47 read:

48 552.34 Legislative findings; public purpose.--The
 49 Legislature finds and declares that:

50 (1) Construction materials mining activities require the
 51 use of explosives to fracture material prior to excavation.

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

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

58 Section 4. Section 552.36, Florida Statutes, is created to
 59 read:



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60 552.36 Exclusive jurisdiction; Division of Administrative
61 Hearings.--

62 (1) The Division of Administrative Hearings has exclusive
63 jurisdiction over all claims for damages to real or personal
64 property caused by the use of explosives in connection with
65 construction materials mining activities. The provisions of ss.
66 552.32-552.44 do not affect any claim seeking recovery for
67 personal injury, emotional distress, or punitive damages. Any
68 cause of action that involves both a claim for damage to real or
69 personal property and another claim that is not addressed by ss.
70 552.32-552.44 must be bifurcated so that any claim seeking
71 recovery for damage to real or personal property is adjudicated
72 by the Division of Administrative Hearings.

73 (2) Notwithstanding s. 552.25, the review procedures set
74 forth in ss. 552.32-552.44 preempt any claims, recovery, or
75 similar procedure of any municipality, agency, board, or county
76 or any other subdivision, entity, or special district of the
77 state which would otherwise address a claim for damage caused by
78 the use of explosives in connection with construction materials
79 mining activities.

80 Section 5. Section 552.38, Florida Statutes, is created to
81 read:

82 552.38 Security requirement.--

83 (1) As a prerequisite to obtaining or renewing a valid
84 user license as required by s. 552.091(5)(a), a person who uses
85 explosives in connection with construction materials mining
86 activities must post and maintain a bond or letter of credit as
87 security during the period required under subsection (2).
88 Evidence that the bond has been posted and maintained in
89 compliance with this section must be maintained by any user of



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90 explosives in connection with construction materials mining
91 activities as part of the mandatory record maintenance
92 requirements of s. 552.112. The person must maintain, in a
93 format approved by the Division of State Fire Marshal of the
94 Department of Financial Services, a completed form that shows
95 the amount and location of the bond or identifies the bond
96 surety and the current bond value.

97 (2) The bond or letter of credit required under subsection
98 (1) must be in an amount not less than \$100,000, notwithstanding
99 an award made by an administrative law judge under s. 552.40(7).
100 If the user of explosives has not been identified as a
101 respondent in any pending claim for damages under ss. 552.32-
102 552.44, and if renewal of the user license is not sought, the
103 bond required under this section may be released upon the
104 expiration of the user license pursuant to s. 552.091(6) or 181
105 days after the final use of explosives under the license,
106 whichever occurs later.

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

109 Section 6. Section 552.40, Florida Statutes, is created to
110 read:

111 552.40 Administrative remedy for alleged damage due to the
112 use of explosives in connection with construction materials
113 mining activities.--

114 (1) A person may initiate an administrative proceeding to
115 recover damages resulting from the use of explosives in
116 connection with construction materials mining activities by
117 filing a petition with the Division of Administrative Hearings
118 on a form provided by the division and accompanied by a filing
119 fee of \$100 within 180 days after the occurrence of the alleged



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

125 (2) The petition must include:

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

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

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

131 (d) A description of the damage caused and the amount
132 sought for recovery.

133 (3) Within 5 business days after the Division of
134 Administrative Hearings receives a petition, the division shall
135 issue and serve on the petitioner and the respondent an initial
136 order that assigns the case to a specific administrative law
137 judge and provides general information regarding the practice
138 and procedure before the division. The initial order must advise
139 that a summary hearing is available upon the agreement of the
140 parties under subsection (6) and must briefly describe the
141 expedited time sequences, limited discovery, and final order
142 provisions of the summary procedure. The initial order must also
143 contain a statement advising the petitioner and the respondent
144 that a mandatory, nonbinding mediation is required before a
145 summary administrative hearing or a formal administrative
146 hearing may be held.

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



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150 the location of mediation. If the parties fail to do so within
151 30 days after the order for mediation is issued, the
152 administrative law judge shall designate the mediator and the
153 location of mediation. Petitioner and respondent shall each pay
154 one-half of the cost of mediation. If the petitioner's annual
155 income is less than 150 percent of the applicable federal
156 poverty guideline published in the Federal Register by the
157 United States Department of Health and Human Services, the
158 respondent shall bear the full cost of mediation. The mediation
159 must be concluded within 60 days after the date of designation
160 of the mediator unless the parties agree upon a different date.

161 (5) If the parties have not reached a settlement within 30
162 days after the conclusion of the mediation, the administrative
163 law judge shall set the matter for formal administrative hearing
164 as soon thereafter as possible at a location in the county where
165 the alleged damage occurred. However, a formal administrative
166 hearing may not be scheduled sooner than 30 days after the
167 conclusion of the mediation.

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

176 (7) If the administrative law judge finds that the
177 preponderance of the evidence presented demonstrates that the
178 petitioner's damages were caused by the respondent's use of
179 explosives, the administrative law judge shall set forth in a



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180 final order precise findings as to the damages attributable to
181 the respondent and shall direct the respondent to pay damages in
182 an amount supported by the preponderance of the evidence
183 presented within 30 days after the final order is issued, unless
184 the matter is appealed in accordance with s. 552.42. If the
185 respondent fails to pay the damages within 30 days after the
186 final order is issued or within 30 days after the entry of an
187 appellate mandate affirming a final order awarding damages, the
188 petitioner may request and the administrative law judge may
189 order that the petitioner be paid from the security posted by
190 the respondent under s. 552.38 the amount of the damages
191 awarded. To the extent the security does not satisfy the full
192 amount of the damages awarded, the administrative law judge may
193 enter a judgment directly against the respondent for the amount
194 of the difference.

195 (8) If the administrative law judge finds that the
196 preponderance of the evidence presented demonstrates that the
197 petitioner's alleged damages were not caused by the respondent's
198 use of explosives, the administrative law judge shall set forth
199 in a final order precise findings as to the lack of
200 responsibility of the respondent.

201 (9) The prevailing party is entitled to recovery of
202 reasonable taxable costs for the administrative proceedings,
203 including expert witness fees and reasonable attorney's fees,
204 not to exceed \$15,000 in the aggregate. This \$15,000 cap on the
205 combined amount of awardable costs and fees does not apply if
206 the administrative law judge determines that the claim or
207 defense of the nonprevailing party:

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



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

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

215
 216 The losing party has up to 120 days to pay the total amount of
 217 attorney's fees and taxable costs assessed. This subsection does
 218 not apply to a petitioner who is the nonprevailing party if the
 219 petitioner's annual income is less than 150 percent of the
 220 applicable federal poverty guideline published in the Federal
 221 Register by the United States Department of Health and Human
 222 Services.

223 (10) Except as otherwise provided in ss. 552.32-552.44,
 224 the procedure for the administrative proceedings provided by
 225 this act must be governed by the uniform rules of procedure for
 226 decisions determining substantial interests which are authorized
 227 by s. 120.54(5), notwithstanding the fact that those rules
 228 implement provisions of chapter 120 which are applicable to
 229 proposed or final agency action.

230 (11) The filing fees paid pursuant to subsection (1) shall
 231 be deposited into the Administrative Trust Fund of the Division
 232 of Administrative Hearings to defray the expenses and costs
 233 associated with the administration of ss. 552.32-553.44.

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

236 552.42 Appeal.--The petitioner or the respondent may
 237 appeal the decision of the administrative law judge to the
 238 district court of appeal with jurisdiction over the county where
 239 the hearing was held by filing a notice, accompanied by the



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240 required filing fee, as provided by the Florida Rules of
241 Appellate Procedure. The payment of any award shall be stayed
242 during the pendency of an appeal.

243 Section 8. Section 552.44, Florida Statutes, is created to
244 read:

245 552.44 Prior claims.--This act does not affect any claim
246 filed in any tribunal before the effective date of this act.

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