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## CHAMBER ACTION

The Committee on Judiciary recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

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 in cases 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



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28 exceptions; providing for appeals; providing  
29 applicability; providing an effective date.

30

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

32

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

35 552.30 Construction materials mining activities.--

36 (1) Notwithstanding the provisions of s. 552.25, the State  
37 Fire Marshal shall have the sole and exclusive authority to  
38 promulgate standards, limits, and regulations regarding the use  
39 of explosives in conjunction with construction materials mining  
40 activities. Such authority to regulate use shall include,  
41 directly or indirectly, the operation, handling, licensure, or  
42 permitting of explosives and setting standards or limits,  
43 including, but not limited to, ground vibration, frequency,  
44 intensity, blast pattern, air blast and time, date, occurrence,  
45 and notice restrictions. As used in this section, "construction  
46 materials mining activities" means the extraction of limestone  
47 and sand suitable for production of construction aggregates,  
48 sand, cement, and road base materials for shipment offsite by  
49 any person or company primarily engaged in the commercial mining  
50 of any such natural resources.

51 Section 2. Section 552.32, Florida Statutes, is created to  
52 read:

53 552.32 Popular name.--Sections 552.32-552.44 may be known  
54 by the popular name the "Florida Construction Materials Mining  
55 Activities Administrative Recovery Act."



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56 Section 3. Section 552.34, Florida Statutes, is created to  
57 read:

58 552.34 Legislative findings; public purpose.--The  
59 Legislature finds and declares that:

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

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

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

68 Section 4. Section 552.36, Florida Statutes, is created to  
69 read:

70 552.36 Exclusive jurisdiction; Division of Administrative  
71 Hearings.--

72 (1) The Division of Administrative Hearings has exclusive  
73 jurisdiction over all claims for damages to real or personal  
74 property caused by the use of explosives in connection with  
75 construction materials mining activities. The provisions of ss.  
76 552.32-552.44 do not affect any claim seeking recovery for  
77 personal injury, emotional distress, or punitive damages. Any  
78 cause of action that involves both a claim for damage to real or  
79 personal property and another claim that is not addressed by ss.  
80 552.32-552.44 must be bifurcated so that any claim seeking  
81 recovery for damage to real or personal property is adjudicated  
82 by the Division of Administrative Hearings.



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83        (2) Notwithstanding s. 552.25, the review procedures set  
84 forth in ss. 552.32-552.44 preempt any claims, recovery, or  
85 similar procedure of any municipality, agency, board, or county  
86 or any other subdivision, entity, or special district of the  
87 state which would otherwise address a claim for damage caused by  
88 the use of explosives in connection with construction materials  
89 mining activities.

90        Section 5. Section 552.38, Florida Statutes, is created to  
91 read:

92        552.38 Security requirement.--

93        (1) As a prerequisite to obtaining or renewing a valid  
94 user license as required by s. 552.091(5)(a), or obtaining or  
95 renewing a valid license or permit under s. 552.30, a person who  
96 uses explosives in connection with construction materials mining  
97 activities must post and maintain a bond or letter of credit as  
98 security as required under subsection (2). Evidence that the  
99 bond has been posted and maintained in compliance with this  
100 section must be maintained by any licensee or permitholder for  
101 the use of explosives in connection with construction materials  
102 mining activities as part of the mandatory record maintenance  
103 requirements of s. 552.112. The person must maintain, in a  
104 format approved by the Division of State Fire Marshal of the  
105 Department of Financial Services, a completed form that shows  
106 the amount and location of the bond or identifies the bond  
107 surety and the current bond value.

108        (2) The bond or letter of credit required under subsection  
109 (1) must be in an amount not less than \$100,000, notwithstanding  
110 an award made by an administrative law judge under s. 552.40(7).



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111 In the case of multiple licenseholders and permit holders, a  
112 single bond in the aggregate amount of not less than \$100,000  
113 may be provided as security for the individual permits and/or  
114 licenses. If the user of explosives has not been identified as a  
115 respondent in any pending claim for damages under ss. 552.32-  
116 552.44, and if renewal of the license or permit is not sought,  
117 the bond required under this section may be released upon the  
118 expiration of the license or permit, or 181 days after the final  
119 use of explosives under the license, whichever occurs later,  
120 provided the bond to be released is not security for other  
121 permits or licenses.

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

124 Section 6. Section 552.40, Florida Statutes, is created to  
125 read:

126 552.40 Administrative remedy for alleged damage due to the  
127 use of explosives in connection with construction materials  
128 mining activities.--

129 (1) A person may initiate an administrative proceeding to  
130 recover damages resulting from the use of explosives in  
131 connection with construction materials mining activities by  
132 filing a petition with the Division of Administrative Hearings  
133 on a form provided by the division and accompanied by a filing  
134 fee of \$100 within 180 days after the occurrence of the alleged  
135 damage. If the petitioner submits an affidavit stating that the  
136 petitioner's annual income is less than 150 percent of the  
137 applicable federal poverty guideline published in the Federal



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138 Register by the United States Department of Health and Human  
139 Services, the \$100 filing fee must be waived.

140 (2) The petition must include:

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

142 (b) The name and address of the respondent, including the  
143 applicable user licenseholder under s. 552.091(5) and  
144 permitholder under s. 552.30;

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

148 (d) A description of the damage caused and the amount  
149 sought for recovery.

150 (3) Within 5 business days after the Division of  
151 Administrative Hearings receives a petition, the division shall  
152 issue and serve on the petitioner and the respondent an initial  
153 order that assigns the case to a specific administrative law  
154 judge and provides general information regarding the practice  
155 and procedure before the division. The initial order must advise  
156 that a summary hearing is available upon the agreement of the  
157 parties under subsection (6) and must briefly describe the  
158 expedited time sequences, limited discovery, and final order  
159 provisions of the summary procedure. The initial order must also  
160 contain a statement advising the petitioner and the respondent  
161 that a mandatory, nonbinding mediation is required before a  
162 summary administrative hearing or a formal administrative  
163 hearing may be held.

164 (4) The administrative law judge shall issue an order  
165 directing mediation under Rule 1700 et seq., Florida Rules of



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166 Civil Procedure. The parties shall jointly select a mediator and  
167 the location of mediation. If the parties fail to do so within  
168 30 days after the order for mediation is issued, the  
169 administrative law judge shall designate the mediator and the  
170 location of mediation. Petitioner and respondent shall each pay  
171 one-half of the cost of mediation. If the petitioner's annual  
172 income is less than 150 percent of the applicable federal  
173 poverty guideline published in the Federal Register by the  
174 United States Department of Health and Human Services, the  
175 respondent shall bear the full cost of mediation. The mediation  
176 must be concluded within 60 days after the date of designation  
177 of the mediator unless the parties agree upon a different date.

178 (5) If the parties have not reached a settlement within 30  
179 days after the conclusion of the mediation, the administrative  
180 law judge shall set the matter for formal administrative hearing  
181 as soon thereafter as possible at a location in the county where  
182 the alleged damage occurred. However, a formal administrative  
183 hearing may not be scheduled sooner than 30 days after the  
184 conclusion of the mediation.

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



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193        (7) If the administrative law judge finds that the  
194 preponderance of the evidence presented demonstrates that the  
195 petitioner's damages were caused by the respondent's use of  
196 explosives, the administrative law judge shall set forth in a  
197 final order precise findings as to the damages attributable to  
198 the respondent and shall direct the respondent to pay damages in  
199 an amount supported by the preponderance of the evidence  
200 presented within 30 days after the final order is issued, unless  
201 the matter is appealed in accordance with s. 552.42. If the  
202 respondent fails to pay the damages within 30 days after the  
203 final order is issued or within 30 days after the entry of an  
204 appellate mandate affirming a final order awarding damages, the  
205 petitioner may request and the administrative law judge may  
206 order that the petitioner be paid from the security posted by  
207 the respondent under s. 552.38 the amount of the damages  
208 awarded. To the extent the security does not satisfy the full  
209 amount of the damages awarded, the administrative law judge may  
210 enter a judgment directly against the respondent for the amount  
211 of the difference.

212        (8) If the administrative law judge finds that the  
213 preponderance of the evidence presented demonstrates that the  
214 petitioner's alleged damages were not caused by the respondent's  
215 use of explosives, the administrative law judge shall set forth  
216 in a final order precise findings as to the lack of  
217 responsibility of the respondent.

218        (9) The prevailing party shall be entitled to recover  
219 taxable costs, including expert witness fees. The prevailing  
220 party shall be entitled to an award of reasonable attorney's





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221 fees if the administrative law judge determines that the claim  
222 or defense of the nonprevailing party:

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

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

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

230

231 The losing party has up to 120 days to pay the total amount of  
232 attorney's fees and taxable costs assessed. This subsection does  
233 not apply to a petitioner who is the nonprevailing party if the  
234 petitioner's annual income is less than 150 percent of the  
235 applicable federal poverty guideline published in the Federal  
236 Register by the United States Department of Health and Human  
237 Services.

238 (10) Except as otherwise provided in ss. 552.32-552.44,  
239 the procedure for the administrative proceedings provided by  
240 this act must be governed by the uniform rules of procedure for  
241 decisions determining substantial interests which are authorized  
242 by s. 120.54(5), notwithstanding the fact that those rules  
243 implement provisions of chapter 120 which are applicable to  
244 proposed or final agency action.

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



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

251 552.42 Appeal.--The petitioner or the respondent may  
252 appeal the order of the administrative law judge to the district  
253 court of appeal with jurisdiction over the county where the  
254 hearing was held by filing a notice, accompanied by the required  
255 filing fee, as provided by the Florida Rules of Appellate  
256 Procedure. The payment of any award shall be stayed during the  
257 pendency of an appeal.

258 Section 8. Section 552.44, Florida Statutes, is created to  
259 read:

260 552.44 Prior claims.--This act does not affect any claim  
261 filed in any tribunal before the effective date of this act.

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