

Committee Substitute for Senate Bill No. 472

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 short title; 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; designating a trust fund 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, directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions. As used in this section, “construction materials mining activities” means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources.

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

552.32 Short title.—Sections 552.32-552.44 may be cited as the “Florida Construction Materials Mining Activities Administrative Recovery Act.”

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

552.34 Legislative findings; public purpose.—The Legislature finds and declares that:

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

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

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

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

552.36 Exclusive jurisdiction; Division of Administrative Hearings.—

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

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

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

552.38 Security requirement.—

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

(2) The bond or letter of credit required under subsection (1) must be in an amount not less than \$100,000, notwithstanding an award made by an administrative law judge under s. 552.40(7). In the case of a multiple licenseholder or multiple permitholder, a single bond in the aggregate amount of not less than \$100,000 may be provided as security for the individual permits or licenses. If the user of explosives has not been identified as

a respondent in any pending claim for damages under this chapter, and if renewal of the license or permit is not sought, the bond required under this section may be released upon the expiration of the license or permit or 181 days after the final use of explosives under the license, whichever occurs later, if the bond to be released is not security for other permits.

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

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

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

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

(2) The petition must include:

(a) The name and address of the petitioner;

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

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

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

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

(4) The administrative judge shall issue an order directing mediation under Rule 1700 et seq., Florida Rules of Civil Procedure. The parties shall jointly select a mediator and the location of mediation. If the parties fail to do so within 30 days after the order for mediation is issued, the administrative law judge shall designate the mediator and the location of mediation.

Petitioner and respondent shall each pay one-half of the cost of mediation. If the petitioner's annual income is less than 150 percent of the applicable federal poverty guideline published in the Federal Register by the United States Department of Health and Human Services, the respondent shall bear the full cost of mediation. The mediation must be concluded within 60 days after the date of designation of the mediator unless the parties agree upon a different date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor June 2, 2003.

Filed in Office Secretary of State June 2, 2003.