

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1130

SPONSOR: Senator Casas

SUBJECT: Explosives

DATE: March 27, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Chapter 552, F.S., establishes requirements for the manufacture, distribution, and use of explosives, enforced by the Division of State Fire Marshal (“division”) within the Department of Insurance. The division issues licenses and certificates to all companies and individuals who are manufacturer-distributors, dealers, users, and blasters of explosives.

SB 1130 requires an applicant for an explosives user license to provide the division with proof of financial responsibility in an amount determined by rule of the division not to exceed \$1 million, based upon the extent and duration of the use of explosives. The financial responsibility must be maintained until the division determines that the explosive activity has been completed.

The bill would require the division to adopt rules prescribing a distance from a residential area within which explosives may not be used.

Any person injured or whose property is damaged by a user’s use of explosives may initiate a civil action for damages from the guarantor of the user’s financial responsibility. When a user is in bankruptcy, or when jurisdiction in any state or federal court cannot be obtained over a user likely to be solvent at the time of judgment, any such claim may be asserted directly against the guarantor providing the financial responsibility, limited by the amount of the financial responsibility. The guarantor may invoke all rights and defenses that would have been available to the user.

The bill authorizes the division to bring a civil action in a court of competent jurisdiction to impose a civil penalty of up to \$15,000 per day for a violation of a rule prohibiting the use of explosives within a prescribed distance from a residential area.

The division states that under current law, the proposed Florida Fire Prevention Code and the Life Safety Code adopts standards for ground vibration, air blast, and flyrock for all blasting operations, as contained in the National Fire Protection Association’s “Explosives Materials

Code) (NFPA 495). These standards specifically address the prevention of collateral property damage based on the maximum ground vibration, peak particle velocity, and air blast relative to distance.

This bill substantially amends the following sections of the Florida Statutes: 552.13 and 552.161. This bill creates section 552.095, Florida Statutes

II. Present Situation:

Chapter 552, F.S., establishes requirements for the manufacture, distribution, and use of explosives. The Division of State Fire Marshal (“division”) under the Department of Insurance is responsible for enforcing this chapter. The division issues licenses and certificates to all companies and individuals who are manufacturer-distributors, dealers, users, and blasters of explosives. There are currently 202 licensed users of explosives. The division conducts investigations of blasting scenes and storage facilities for explosives to determine compliance with statutes.

Persons who violate any provision of chapter 552, F.S., or who violates a cease and desist order, are subject to an administrative fine not to exceed \$1,000 for each violation, or suspension or revocation of its license. Criminal penalties are imposed for specific offenses.

Once the division issues a license to a user of explosives, the division does not issue permits to the licensee to conduct particular blasting operations. However, such permits may be required by the local county or city in which the blasting operation takes place. There are no requirements in the current laws or rules that relate to minimum financial responsibility for users of explosives.

Section 552.211(3), F.S. provides as follows:

The division may restrict the quantity and use of explosives at any location within the state when the division deems the use of such explosives is likely to cause injury to life or property.

In exercise of its statutory authority cited above, the division has responded to specific complaints regarding the use of explosives near residential structures and has entered into stipulation agreements (stipulated orders) with the users of the explosives to establish conditions for their use. For example, after receiving complaints from neighborhood residents near a mining company, the division entered into a stipulation agreement with the mining company that established limitations on the maximum ground vibrations relative to distance, restrictions on the time of day for the explosions, and related conditions.

Section 552.13, F.S. authorizes the division to adopt rules setting forth “minimum general standards” covering the manufacture, use, sale, handling and storage of explosives as are reasonably necessary for the protection of the health, welfare, and safety of the public, which rules must be in substantial conformity with generally accepted standards of safety concerning such subject matters.

The division has not adopted any rules that require a user of explosives to be a certain minimum distance from residential structures or other buildings. Nor has the division adopted any rules that

impose limits on the ground vibration, air blast or flyrock from use of explosives. A division representative stated that such rules were proposed about ten years ago, but were never filed due to the controversy surrounding the proposed rules.

However, according to the division representative, restrictions for use of explosives relating to ground vibration, air blast, and flyrock are expected to be contained in the Florida Fire Prevention Code and the Life Safety Code that is being developed. This code and the proposed Florida Building Code will be considered by the Legislature this session, pursuant to 1998 legislation that provided for development of a single, unified Florida Building Code, effective January 1, 2001. The 1998 law provides that as of that date, the fire prevention and life safety requirements will be those contained in the Florida Fire Prevention Code and the Life Safety Code, to be adopted by the State Fire Marshal. Conflicts between the Florida Fire Prevention Code and the Life Safety Code and the Florida Building Code will be minimized through agreement between the Florida Building Commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of life safety.

The division states that the proposed Florida Fire Prevention Code and the Life Safety Code adopts standards for ground vibration, air blast, and flyrock for all blasting operations, as contained in the National Fire Protection Association's "Explosives Materials Code" (NFPA 495). These standards specifically address the prevention of collateral property damage based on the maximum ground vibration, peak particle velocity, and air blast relative to distance.

At this time, staff has not researched the issue of civil liability for injuries or property damage caused by users of explosives.

III. Effect of Proposed Changes:

Section 1. Creates s. 552.095, F.S., to require an applicant for an explosives user license to provide the division with proof of financial responsibility in an amount determined by rule of the division not to exceed \$1 million, based upon the extent and duration of the use of explosives. Such financial responsibility may be established in the form of cash, trust fund, surety bond, letter of credit, casualty insurance, a financial test, corporate guaranty, or a combination thereof. The financial responsibility must be maintained until the division determines that the explosive activity has been completed.

Any person injured or whose property is damaged by a user's use of explosives may initiate a civil action for damages from the guarantor of the user's financial responsibility. When a user is in bankruptcy, or when jurisdiction in any state or federal court cannot be obtained over a user likely to be solvent at the time of judgment, any such claim may be asserted directly against the guarantor providing the financial responsibility, limited by the amount of the financial responsibility. The guarantor may invoke all rights and defenses that would have been available to the user.

Section 2. Amends s. 552.13, F.S., relating to promulgation of regulations by the Division of State Fire Marshall, to require the division to adopt rules prescribing a distance from a residential area within which explosives may not be used.

Section 3. Amends s. 552.161, F.S., relating to administrative fines to provide injunctive relief and civil penalty. The section authorizes the division to bring a civil action in a court of competent jurisdiction to impose a civil penalty of up to \$15,000 per day for a violation of a rule prohibiting the use of explosives within a prescribed distance from a residential area. Presently, the division is authorized to impose an administrative fine of up to \$1,000 for each violation. The division, or any substantially affected person, is authorized to bring a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with chapter 552 or rules adopted under this chapter.

Section 4. Provides that this act shall take effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill does not specify whether the rules required to be adopted by the division prescribing a distance from a residential area within which explosives may not be used, are intended to apply to existing facilities. Applying such restrictions to existing facilities may raise constitutional issues of unlawful taking of property or impairment of vested rights.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill imposes financial responsibility requirements of up to \$1 million for licensed users of explosives and civil liability against such licensees for damages to persons or property arising out of the use of explosives. Such liability also extends to the guarantor of the financial responsibility.

Owners of mining operations and other businesses that use explosives would be subject to distance restrictions from a residential area which may limit the business activity and income of that operation.

Persons who are injured or whose property is damaged by explosives may have greater access to financial compensation due to the financial responsibility requirements and the civil remedy cause of action created by this bill.

C. Government Sector Impact:

The Division of State Fire Marshal writes that the bill would require the division to maintain records and monitor blasting activities that are not currently a part of their workload. These new activities would include a mechanism to identify blasting activities, determining the beginning and end of the blasting activity, and maintenance of records for purposes of enforcing the financial responsibility requirements. The division states that such blasting activities could include a special effect shows, explosives used for building demolition, to clean boilers and to clean barnacles off the bottom of ships, which are ongoing activities that the division licences.

The division estimates the following fiscal impact to the Insurance Commissioner’s Regulatory Trust Fund:

Fiscal Impact to Insurance Com. Reg. Trust Fund	Amount Year 1 (FY 00-01)	Amount Year 2 (FY 01-02)	Amount Year 3 (FY 02-03)
FTE	5.0	5.0	5.0
Salaries and Benefits	170,579	170,579	170,579
Expense	58,056	36,565	36,565
OCO	10,000	0	0
Vehicles	48,000	0	0
Total Impact to Fund	\$286,635	\$207,144	\$207,144

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
