

Crumbling Concrete Foundations in Connecticut

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Issue

Summarize legislative action in response to the crumbling concrete foundation issue in Connecticut.

Summary

Beginning in the early 1980s, stone aggregate sourced from Becker's Quarry by J.J. Mottes, a concrete company, was used in the construction of several northeastern Connecticut homes. The quarry is located on a vein of rock containing significant amounts of pyrrhotite, a naturally occurring iron sulfide mineral, and as a result the stone aggregate used to produce concrete also contained elevated amounts of this mineral. Pyrrhotite expands when exposed to water and oxygen, which causes concrete containing it to crack and swell. Foundations containing pyrrhotite may develop cracks and gaps that expand over time, impacting the attached structure and causing the concrete to crumble. According to the Capitol Region Council of Governments, homes in at least 36 Connecticut towns are potentially affected by crumbling concrete foundations.

The Connecticut legislature has taken several steps to mitigate the problem, including (1) authorizing bonds for a pyrrhotite testing program; (2) generally requiring homeowners to disclose any concrete problems prior to selling their home; (3) establishing record keeping requirements for companies using stone aggregate in concrete; and (4) creating a captive insurance company, the Connecticut Foundation Solutions Indemnity Company, LLC (CFSIC), and a loan program to assist impacted homeowners with obtaining financial relief and fixing their crumbling foundations.

The full scope of the problem, including its effect on commercial buildings, remains unknown.

Background

In August 2015, Governor Malloy requested that the Department of Consumer Protection (DCP) and the attorney general investigate the crumbling concrete foundation issue and determine whether any Connecticut Unfair Trade Practices Act (CUTPA) violation occurred. Their [report](#), issued July 7, 2016, concludes that (1) it is unlikely a CUTPA violation occurred and (2) if one did, the state is unlikely to recover financial relief adequate to address the size of the problem.

The legislature began holding formal public hearings on the issue in 2016. The Planning and Development Committee publicly heard [HB 5180](#), which would become [PA 16-45](#), on February 19, 2016. Since then, the legislature has held numerous other hearings on related bills, including a Crumbling Concrete Panel Discussion in February 2017 that included input from various stakeholders and impacted residents.

In May 2016, J.J. Mottes and Becker's Quarry entered into an Assurance of Voluntary Compliance with the state, agreeing not to sell aggregate from the quarry, or products containing it, for residential purposes until July 1, 2017. The parties later extended the [agreement](#) until July 1, 2019.

Also In May of 2016, Connecticut passed [PA 16-45](#), which required DCP to investigate the cause of concrete foundation failure and established recordkeeping requirements for residential and commercial builders. DCP's [report](#), issued on December 30, 2016, concludes that's pyrrhotite is necessary for foundations to deteriorate and that the J.J. Mottes was the only company identified producing concrete connected to crumbling foundations. Among other things, the report also finds that no foundations poured before 1983 or after 2010 were reported to DCP but that due to the condition's unpredictability, this date range may expand.

The legislature has established a framework for assisting homeowners that have crumbling foundations due to pyrrhotite. It includes a testing program, increased documentation, and a captive insurance company to facilitate grants and other financial assistance. Financial assistance is funded through state bonding, including \$5 million to reimburse homeowners for necessary pyrrhotite testing. An additional \$20 million per year for five years (FYs 18-22) has been authorized for use by the captive insurance company, which will generally facilitate aid to homeowners.

Eligible homeowners may also participate in the Collapsing Foundations Credit Enhancement Program, which will offer below-market rate loans to help homeowners repair and replace crumbling foundations. However, the program is not yet active (see below).

In addition to the actions described below, the legislature has held numerous public hearings and the state Department of Housing set aside \$1 million from the federally-funded Community Development Block Grant Program to help municipalities mitigate crumbling concrete damage.

State Actions Concerning Crumbling Concrete Foundations

Below is a summary of major state actions intended to address crumbling concrete foundations. More information is also available in [OLR's Issue Brief: Select State Actions on Crumbling Foundations](#).

Building Permit Fees

[PA 17-2](#), June Special Session (JSS) (§ 339) waives certain building permit fees for repairing or replacing crumbling foundations. Specifically, municipalities must waive the application and education fees for building permit applications to repair or replace crumbling concrete foundations. This waiver requirement applies regardless of conflicting municipal charters, home rule ordinances, or special acts.

By law, the state-required education fee is used for building and fire code training and education programs for state and local officials and individuals in the construction industry ([CGS § 29-251c](#)).

Connecticut Foundation Solutions Indemnity Company, LLC (CFSIC)

[PA 17-2](#), JSS (§ 336) establishes CFSIC as a nonprofit captive insurance company for the public purpose of assisting residential homeowners with foundations crumbling due to pyrrhotite. By law, the captive exists until June 30, 2022, unless extended or terminated early.

Generally, a captive insurer is an insurance company formed to insure or reinsure the risks of its owners or parent or affiliated company. Under the act, CFSIC will operate like a captive (i.e., be subject to regulation by the Connecticut Insurance Department), but it will not sell or offer traditional insurance policies. Instead, it will facilitate the distribution of grants to impacted homeowners and help organize crumbling foundation assistance programs.

Tax Deduction. Beginning in the 2017 tax year, homeowners with crumbling concrete foundations may reduce their Connecticut adjusted gross income by the amount of any financial assistance received from CFSIC or paid to a contractor on their behalf.

Funding. CFSIC is funded through a five-year bond authorization of up to \$20 million per year and a \$12 homeowners insurance surcharge ([PA 18-160](#)). The surcharge is on the named insured on each policy and is applied each time a policy is issued, renewed, amended, or endorsed through

December 31, 2029. The surcharge applies to residential homes, including condominiums. Eight-five percent of the surcharge revenue will be deposited in the Crumbling Foundations Assistance Fund, which CFSIC will use to provide assistance.

Operations. In April 2018, CFSIC's incorporators selected Michael Maglaras and Company as the superintendent. In July, CFSIC finalized its nine-member [Board of Directors](#). The captive has not yet begun assistance operations.

Collapsing Foundations Credit Enhancements Program

[PA 17-2](#), JSS (§ 337) established a Collapsing Foundations Credit Enhancements Program to help homeowners obtain additional funding necessary to replace or repair crumbling concrete foundations. The program, in collaboration with participating financial lenders, must generally make loans available at below market rates. The Connecticut Housing Finance Authority (CHFA) administers the program. However, according to CHFA, the program depends on standards developed by CFSIC, and thus will not be able to offer loans until CFSIC is operational.

Contractual Limitations Period for Homeowners Insurance Policies

[PA 17-2](#), JSS (§ 341) requires personal risk insurance policies and certain condominium master and property insurance policies to allow suit against the insurer for up to one year after the date the insured receives a written denial for all or any part of a claim under a property coverage provision for a crumbling concrete foundation.

Under existing law, a person who wants to sue a homeowners insurer over a claim denial has 24 months from the inception of loss to file suit ([CGS § 38a-307](#)).

Municipal Reevaluation

[PA 16-45](#) requires municipalities, at a homeowner's request, to reassess properties with crumbling concrete foundations. Under the law, these properties must be inspected and the assessment adjusted within 90 days after the report's submission or the next assessment year, whichever is earlier. A new assessment (1) must reflect the property's current value; (2) is valid for five years, regardless of when the municipality's new reevaluation is scheduled; and (3) can be appealed. However, a property owner who repairs or replaces the foundation must notify the assessor within 30 days; the assessor must then reassess the property accordingly.

Prohibition and Standards for Concrete Use

Under [PA 17-2](#), JSS (§§ 338 & 346) it is illegal to knowingly use concrete or recycled material containing pyrrhotite in residential or commercial construction, unless it meets certain standards established by national organizations and adopted by the State Building Inspector. Anyone selling concrete or recycled material containing pyrrhotite must provide the purchaser with written notice that the concrete meets the standards.

According to the State Building Inspector, these standards have not yet been adopted. Although the State Building Inspector adopts the American Concrete Institute standards for concrete, the current testing standards do not specifically identify the presence of pyrrhotite. Additionally, there does not appear to be a consensus unacceptable level of pyrrhotite. Thus, according to the State Building Inspector, standards will be delayed until there are clearly defined testing methods and thresholds.

Record Keeping

[PA 16-45](#) requires individuals building residential and commercial buildings to document the name of the concrete supplier and installer. By law, local building officials must retain the documentation for at least 50 years.

The act also requires executive branch agencies to keep records about owners' claims of faulty or failing residential concrete foundations confidential for at least seven years from the date of receipt. These records are exempt from disclosure under the Freedom of Information Act.

Residential Property Disclosure Report

By law, a seller must provide a purchaser a written residential condition report or credit him or her \$500 at closing ([CGS § 20-327c](#)). Beginning July 1, 2018, the residential property condition form must include:

1. a new statement on concrete foundations suggesting prospective buyers have the foundation inspected by a licensed structural engineer for deterioration due to the presence of pyrrhotite and
2. disclosures on the building's structure and any improvements made to it, including questions on repairs done to the foundation ([PA 18-179](#)).

Testing Program

In February 2017, the State Bond Commission allocated \$5 million to provide a grant to the Capitol Region Council of Governments (CROG) to run a foundation testing program. The program generally reimburses eligible homeowners (1) 50% of the cost, up to \$2,000, for pyrrhotite testing of two core samples or (2) 100% of the cost, up to \$400, for visual inspections. For more information, see CROG's [program website](#).

State Resources

The following state agencies maintain informational websites on crumbling concrete foundations:

- Department of Consumer Protection: [Deteriorating Concrete Foundations](#)
- Department of Consumer Protection: [Concrete Brochure](#)
- Department of Housing: [Crumbling Foundations](#)
- Capitol Region Council of Governments: [Foundation Testing](#)
- Capitol Region Council of Governments: [Crumbling Foundations](#)

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