



PA 19-192—sHB 7179

Insurance and Real Estate Committee

AN ACT CONCERNING CRUMBLING CONCRETE FOUNDATIONS

SUMMARY: This act changes various policies affecting residential homes with foundations that are crumbling due to the presence of pyrrhotite (“crumbling concrete foundations”). Specifically, the act makes more buildings and building owners eligible for several assistance programs that support repairing or replacing crumbling concrete foundations by broadening the definition of “residential building” to include, among other things, buildings containing more than four condominium units (§ 2). It also correspondingly expands a concrete seller disclosure requirement and certain municipal bonding authorities, and makes conforming changes to income tax and other statutes.

The act also changes the residential property condition report, which property owners must use to make disclosures to potential buyers before a sale, by:

1. requiring owners to disclose and explain any information they have related to crumbling concrete;
2. establishing additional disclosure requirements for regions affected by crumbling concrete foundations and anyone selling foreclosed residential property in an affected municipality; and
3. requiring the disclosure of all significant defects in a property’s foundation, even if the seller fails to complete the residential disclosure report (§§ 5 & 6).

It creates a private right of action allowing buyers to bring a civil suit to recover actual damages from sellers who fail to make the required disclosures (§ 6).

Additionally, the act:

1. establishes a collapsing foundation supplemental loan program to guarantee loans made by banks and credit unions in Connecticut to owners of pyrrhotite-damaged buildings (§§ 7-12);
2. changes Connecticut Foundations Solutions Indemnity Corp. (CFSIC) enabling statutes, removing an obligation to create a unified aid application and shortening certain deadlines (§ 1);
3. changes the \$12 Healthy Homes Fund insurance surcharge, including (a) changing when and on whom the surcharge is assessed and (b) requiring surplus lines brokers to collect and remit the surcharge on applicable policies (§ 3);
4. specifies that a grant of up to \$1 million from the Healthy Homes Fund to aid certain homeowners in New Haven and Woodbridge with homes suffering from subsidence damage and water infiltration, must come from money accrued in the Healthy Homes Fund during the 2019 calendar year (§ 4);

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5. establishes a program to encourage the development of technologies and techniques to prevent, identify, and repair crumbling concrete foundations (§ 13);
6. requires the state's chief data officer to develop and implement a plan for collecting data needed to conduct crumbling concrete foundation research (§ 14); and
7. establishes a working group to (a) develop a model quality control plan for quarries and (b) study the workforce of contractors repairing and replacing crumbling concrete foundations (§ 15).

Finally, the act makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2019, except the (1) provisions on the Healthy Homes Fund (§§ 3 & 4), Collapsing Foundation Supplemental Loan Program (§§ 7 – 12), and the quarry working group (§ 15) are effective upon passage and (2) changes to the residential condition report (§ 5) are effective October 1, 2019, with the private right of action provisions (§ 6) effective January 1, 2020.

§ 1 — CHANGES TO CFSIC ENABLING STATUTES

The act removes the requirement that CFSIC develop a single, unified financial aid application in consultation with the Department of Housing, Connecticut Housing Finance Authority (CHFA), and lenders participating in the Collapsing Foundations Credit Enhancement Program. It also requires CFSIC, when it adopts new guidelines, to publish them at least 15 days prior to their adoption, instead of 30 days before as under prior law. Finally, it requires CFSIC to require individuals receiving aid to disclose all financial compensation received from a personal risk policy, instead of only from a homeowners policy.

§ 2 — RESIDENTIAL BUILDING DEFINITION

The act broadens the definition of “residential building,” as used in certain statutes, to mean a (1) single- or multi-family residential unit, including a condominium unit or unit in a common interest community, or (2) building containing one or more of these units. Under prior law, a residential building was a one- to four-family home, including a condominium or planned unit development.

The changes apply to:

1. CFSIC's eligibility statutes, making more homeowners eligible for CFSIC grants;
2. the Crumbling Foundations Assistance Fund statutes, making more homeowners eligible for Collapsing Foundations Credit Enhancement Program loans and help from the special homeowner advocate;
3. disclosure requirements for concrete sellers;
4. certain municipal bonding statutes related to abating deleterious conditions on property suffering from pyrrhotite damage; and
5. certain income tax provisions that allow owners of residential buildings to subtract from their state adjusted gross income the amount of certain

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crumbling concrete assistance they receive.

The definition also applies to the newly created Collapsing Foundation Supplemental Loan Program (see §§ 7-12 below).

§ 3 — \$12 HEALTHY HOMES SURCHARGE

The Healthy Homes surcharge is a \$12 surcharge imposed on certain homeowners insurance policies. By law, 85% of the amount collected is transferred into the Crumbling Foundations Assistance Fund, which CFSIC uses to assist homeowners with crumbling foundations (CGS § 38a-331). The remaining amount is used by the Department of Housing for lead abatement, among other things (CGS § 8-446).

The act assesses the surcharge on the first insured listed in the policy, instead of on the policy's named insured (which in practice can be more than one individual). Under the act, the insurer, insured, and any mortgagee can reasonably determine how to implement the surcharge, which is due in full when a policy begins or renews.

The act also assesses the surcharge only when a policy is issued or renewed, instead of each time a policy is delivered, issued, renewed, amended, or endorsed. Finally, the act imposes the surcharge on each insurance policy covering (1) owned homes with four or fewer units, excluding mobile homes; (2) individual condominium units; or (3) individual units in a common interest community that are used exclusively for residential purposes. Prior law imposed the surcharge on all personal risk policies covering (1) residential dwellings with four or fewer units and (2) condominiums.

As under prior law, the surcharge applies on policies through December 31, 2029. The act prohibits any portion of the surcharge from being reimbursed, even if a policy is cancelled.

Finally, the act specifically requires surplus lines brokers procuring insurance from nonadmitted insurers to collect and remit the surcharge on applicable policies. Prior law placed this duty on the nonadmitted insurers themselves.

§§ 5 & 6 — RESIDENTIAL PROPERTY CONDITION REPORT

By law, residential property sellers must either use the "residential condition report" to make disclosures about a property's condition to a prospective purchaser or credit the purchaser \$500 at closing. The act adds to the report questions that require sellers to disclose and explain any knowledge they have about pyrrhotite in the foundation. It also:

1. allows buyers to bring a civil suit to recover actual damages from any seller who knows of and fails to disclose significant defects in the property as required by the residential disclosure report;
2. requires sellers to provide the report when the property being sold transfers pursuant to a court order or by deed in lieu of foreclosure; and
3. in areas affected by crumbling concrete foundations, requires (a) municipalities transferring residential property and (b) sellers transferring

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residential property that they acquired through foreclosure, to disclose certain information about a property's foundation.

(Prior law exempted transfers by a municipality and transfers of previously foreclosed properties from the disclosure requirements).

Changes to Residential Condition Report (§ 5)

Under existing law, a seller must disclose any knowledge of foundation problems, settling, testing, inspection, or repairs. The act expands the contents of the report by requiring the seller to additionally:

1. disclose and explain any knowledge he or she has related to pyrrhotite in the property's foundation and
2. for foundation testing and inspections, disclose the testing or inspection method, area it was performed on, and the results, including a copy of any test or inspection report.

Disclosures by Municipalities and Sellers of Foreclosed Property (§ 5)

Under the act, municipalities the Capitol Region Council of Governments determines are affected, or potentially affected, by crumbling foundations must disclose to prospective purchasers any information they have about (1) the presence of pyrrhotite in such properties' foundations, (2) damage and deterioration in the foundations, and (3) repairs or remediation made to the foundations.

They must make the disclosures on a new residential foundation condition report form the act requires the consumer protection commissioner, within available appropriations, to prescribe. Sellers transferring residential properties (1) they acquired through foreclosure and (2) that are located in the affected municipalities must also make these disclosures. (PA 19-196 § 7 makes minor changes to this residential condition report).

As is the case for residential property disclosure reports under existing law, the act requires affected municipalities (and sellers of foreclosed property in these municipalities) to either provide the residential foundation condition report or credit the purchaser \$500 at closing.

Required Disclosure of Significant Defects and Private Right of Action (§ 6)

Under the act, failing to provide either of the required reports does not excuse a seller (including a municipality or seller of foreclosed property in an affected area) from disclosing to a prospective purchaser any significant defects in a residential property. The act specifies that crediting a buyer does not excuse a seller from disclosing defects in the property covered by the report if he or she has actual knowledge of the defect and it significantly impairs the (1) property's value or useful life span or (2) health and safety of its future occupants. If the seller fails to make these disclosures, the act allows a purchaser to bring a civil action in the judicial district in which the property is located to recover actual damages from

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the seller; doing so does not limit any other remedies the purchaser may have.

§§ 7-12 — COLLAPSING FOUNDATION SUPPLEMENTAL LOAN PROGRAM

The act requires CHFA to administer a collapsing foundation supplemental loan program to guarantee loans made by banks and credit unions in Connecticut to owners and occupants of residential buildings (“borrowers”) with pyrrhotite-damaged concrete foundations (the program uses the same definition of a “residential building” as modified by § 2 above). To be eligible, a borrower must have a participation agreement from CFSIC stating that it will pay a portion of the foundation’s repair or replacement cost.

Banks and credit unions with a physical location in Connecticut may participate in the program after providing advanced written notice to CHFA and the Department of Banking (DoB), on a form and manner they prescribe, that includes the financial institution’s contact information.

The act allows participating institutions to issue loans of up to \$75,000, capped at an aggregate maximum of \$20 million for all loans. The loans have a maximum closing cost of \$800 and an interest rate equal to or less than that of a loan with similar terms and schedule offered by the Federal Home Loan Bank of Boston for Amortizing Advances through the New England Fund. The program ends once CHFA processes and the comptroller pays \$2 million in claim guarantees. CHFA must then (1) stop all claims processing and (2) notify the comptroller and each eligible financial institution. The act (1) allows CHFA, DoB, and the comptroller to enter into a memorandum of understanding to implement the act and (2) makes a conforming change.

Program Administration

The act allows CHFA, in consultation with banking industry representatives, to develop standard promissory note and mortgage deed forms for financial institutions to use when issuing program loans. Additionally, by September 1, 2019, CHFA, in consultation with banking industry representatives, must develop (1) reasonable standards that participating institutions can rely on to demonstrate good faith collection efforts (see below) and (2) a readily accessible communication portal for participating institutions to verify in real time the total dollar amount of program loans CHFA issued and guarantee claims submitted to the comptroller. The forms and standards must, to the extent feasible, closely align with existing forms, policies, and procedures and must not require post-delinquency collection efforts beyond 90 days.

Loan Issuance

A participating institution may make loans to eligible borrowers as long as they prove that CFSIC has agreed to pay for a portion of their foundation’s repair or replacement cost. Loans, which can be conditioned on the availability of

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program funds and guarantees, must:

1. be secured by a residential mortgage deed,
2. have terms up to 20 years and be made in accordance with a financial institution's underwriting policies and standards,
3. be less than \$75,000, and
4. have an interest rate that is equal to or lower than the applicable Federal Home Loan Bank of Boston for Amortizing Advances through the New England Fund program rates.

The "applicable rate" is the New England Fund rate that (1) is published on the Federal Home Loan Bank of Boston's website on the date the interest rate is locked in by the borrower and financial institution and (2) has an advance term and amortization schedule that most closely corresponds to the term and amortization schedule of the loan the institution is issuing.

Closing Costs

Under the act, a financial institution may recover up to \$800 from the borrower for expenses paid to third parties for processing the application, closing the loan, and recording fees, and for other services, including obtaining a credit report, flood certification, title search, or appraisal. A borrower may finance the closing costs as part of the loan, subject to the \$75,000 cap, or pay them separately.

Notification to CHFA

Within one business day of making a loan under the program, a financial institution must notify CHFA in writing of the loan amount and any other information about the borrower or loan CHFA requests.

Additional Loans

The act specifies that it does not prohibit a participating financial institution from offering loans to eligible borrowers outside of the program.

Loan Proceeds and Eligible Repair Expenses

The act requires loan proceeds to be used only for "eligible repair expenses," which are (1) necessary to complete a foundation repair or replacement or (2) otherwise necessary to restore the property's functionality and appearance, to the extent they were compromised by the foundation's deterioration or the demolition and construction process. This includes repairing or replacing wall framing, drywall, paint and other wall finishes, porches, decks, gutters, landscaping, outbuildings, sheds, and swimming pools. Unless explicitly allowed as a repair expense, the act excludes costs associated with significant property upgrades. A participating institution may decline a loan application that includes a request to fund ineligible repair expenses, but failing to decline a loan for this reason does

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not impact the institution's ability to have the loan principal guaranteed through the program.

Guarantee Claim Payments

Under the act, a participating program that made a good faith effort to collect a loan's outstanding principal and demonstrates to CHFA that it did so in accordance with its loan servicing and collection policies, may submit a claim to recover the outstanding principal balance. CHFA must process the claim and submit it to the comptroller for payment. Any amount the comptroller needs to pay a claim is deemed appropriated from the General Fund. Once the comptroller pays a claim, and as a condition of the payment, the loan is assigned to the state. CHFA, as the state's agent, may continue loan collection efforts. Any outstanding loan funds collected by CHFA must be deposited back into the General Fund.

The act allows CHFA to terminate any loan guarantee if the financial institution misrepresents any applicable information or fails to comply with the act's requirements.

Financial Institution Program Withdrawal

A financial institution may suspend its participation in or withdraw from the program entirely five business days after notifying CHFA and DoB of its intent to do so and specifying the suspension or withdrawal date. A financial institution that stops participating in the program may still submit a guarantee claim, provided the program is still operational (i.e., has not exceeded its statutory maximum).

Program Description and List of Participating Institutions

By September 1, 2019, CHFA and DoB must each publish on their respective websites a summary of the program and list of participating banks and credit unions. The lists must be updated periodically and include each financial institution's contact information. Additionally, DoB must provide unspecified information about the program to licensed mortgage servicers.

Record Retention

Under the act, CHFA must maintain program administration records, including loans issued and repayments.

§ 13 — CONCRETE FOUNDATION REPAIR AND REPLACEMENT TECHNOLOGY PROGRAM

The act establishes a program to encourage the development of technologies and techniques to prevent, identify, and repair crumbling concrete foundations. Connecticut Innovations, Inc. (CI) must (1) administer the program within

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existing resources and (2) in conjunction with a volunteer panel of experts, develop program standards. The act allows CI to administer the program in coordination with agencies from other states.

§ 14 — CRUMBLING CONCRETE DATA COLLECTION

The act requires the state's chief data officer, in consultation with the Department of Housing, CFSIC, the state geologist, and the expert panel convened under § 13 above, to develop and implement a data collection plan necessary to conduct crumbling concrete foundation research. The act specifies that any data collected is confidential and exempt from the state's Freedom of Information Act, but allows the chief data officer to make it available for research purposes under data sharing agreements that maintain the data's confidentiality as it pertains to identifiable data.

§ 15 — QUARRY QUALITY CONTROL WORKING GROUP

The act establishes an eight-member working group to develop a model quality control plan for quarries and to study the workforce of contractors engaged in repairing and replacing crumbling concrete foundations. The working group must submit its plan to the General Law Committee on or before February 1, 2020, at which point the group terminates.

The working group consists of the following members:

1. two appointed by the House speaker, one with expertise in residential home building and one with expertise in the construction industry;
2. two appointed by the Senate president pro tempore, one of whom must be a Capitol Region Council of Governments member;
3. one each appointed by the House majority and minority leaders; and
4. one each appointed by the Senate majority and minority leaders.

The act specifies that working group appointees may be legislators. It requires appointments to be made by August 7, 2019, and any vacancies to be filled by the appointing authority.

The working group's chairpersons must be selected by the House speaker and the Senate president pro tempore and schedule the first meeting by September 6, 2019.

The act requires the General Law Committee's administrative staff to also serve as the working group's administrative staff.