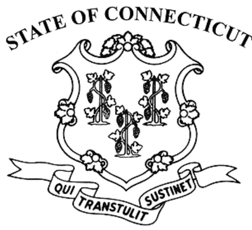

House of Representatives

General Assembly

File No. 550

January Session, 2021

Substitute House Bill No. 6646

House of Representatives, April 21, 2021

The Committee on Planning and Development reported through REP. MCCARTHY VAHEY, C. of the 133rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CRUMBLING CONCRETE FOUNDATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 29-265d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any owner of a residential building who has obtained a written
4 evaluation from a professional engineer licensed pursuant to chapter
5 391 indicating that the foundation of such residential building was made
6 with defective concrete may provide a copy of such evaluation to the
7 assessor and request a reassessment of the residential building by the
8 assessor. Not later than ninety days after receipt of a copy of such
9 evaluation, or prior to the commencement of the assessment year next
10 following, whichever is earlier, the assessor, member of the assessor's
11 staff or person designated by the assessor shall inspect the residential
12 building and adjust its assessment to reflect its current value. Such
13 reassessment may be appealed pursuant to section 12-111. Any
14 reassessment under this section shall apply **[**for five assessment years**]**

15 until the assessor, member of the assessor's staff or person designated
16 by the assessor adjusts the assessment of the residential building
17 pursuant to subsection (b) of this section, notwithstanding the
18 provisions of section 12-62.

19 (b) An owner of a residential building that has obtained a
20 reassessment pursuant to this section shall notify the assessor if the
21 concrete foundation is repaired or replaced. **[**during the five assessment
22 years for which the reassessment is effective.**]** Such notification shall be
23 made in writing within thirty days of the repair or replacement of the
24 concrete foundation. Not later than ninety days after receipt of such
25 notification, or prior to the commencement of the assessment year next
26 following, whichever is earlier, the assessor, member of the assessor's
27 staff or person designated by the assessor shall inspect the residential
28 building and adjust its assessment to reflect its current value.

29 Sec. 2. Subsection (i) of section 38a-91vv of the general statutes is
30 repealed and the following is substituted in lieu thereof (*Effective July 1,*
31 *2021*):

32 (i) The captive insurance company shall continue **[**until June 30, 2022,
33 or**]** until its existence is terminated by law. Upon the termination of the
34 existence of the company, all its right and properties shall pass to and
35 be vested in the state of Connecticut.

36 Sec. 3. (NEW) (*Effective July 1, 2021*) (a) For the purposes of this
37 section, "qualified geologist" means a geologist certified by the
38 American Institute of Professional Geologists, licensed by the National
39 Association of State Boards of Geology or certified or licensed by
40 another organization deemed suitable by the State Geologist.

41 (b) Not later than January 1, 2022, and every four years thereafter, the
42 operator of each quarry in this state that produces aggregate for use in
43 concrete shall prepare a geological source report and provide such
44 report to the State Geologist. Such report shall be prepared in a form and
45 manner prescribed by the State Geologist, and shall include, but need
46 not be limited to, (1) the operations plan and mining, processing, storage

47 and quality control methods utilized by such operator, (2) a description
48 of the characteristics of the aggregate to be excavated at such quarry,
49 which shall be prepared by a qualified geologist, (3) a description of the
50 products to be produced by such quarry, (4) a copy of the results of an
51 inspection of face material and geologic log analysis completed in the
52 previous year by a qualified geologist, and (5) analyses of core samples,
53 completed in the previous year by a qualified geologist, unless such
54 quarry has a satisfactory performance history as determined by the State
55 Geologist.

56 Sec. 4. (NEW) (*Effective from passage*) (a) Not later than January 1, 2023,
57 the Commissioner of Consumer Protection shall, in consultation with
58 the State Geologist, adopt regulations, in accordance with chapter 54 of
59 the general statutes, to develop standards for the testing of aggregates
60 produced by quarries for use in the production of concrete. Such
61 standards shall include, but not be limited to, a requirement that such
62 aggregates be tested to determine the total sulfur content of the
63 aggregates, and identify the presence of pyrrhotite.

64 (b) The standards developed pursuant to subsection (a) of this section
65 shall minimally require:

66 (1) The performance of a rapid total sulfur test on a ten-pound sample
67 of aggregate by any of the following means: (A) X-ray fluorescence
68 analysis, (B) purge and trap gas chromatography analysis, or (C)
69 analysis by combustion furnace;

70 (2) That if the results of the test performed pursuant to subdivision
71 (1) of this subsection reveal that the total sulfur content of the sample in
72 per cent by mass is (A) less than one-tenth per cent, the aggregate shall
73 be approved for use for a period of four years, and the results of the test
74 shall be filed with the State Geologist, (B) equal to or greater than one
75 per cent, the aggregate shall not be permitted for use, and (C) less than
76 one per cent and equal to or greater than one-tenth per cent, the sample
77 shall be subjected to the standards described in subdivision (3) of this
78 subsection; and

79 (3) If the total sulfur content of the sample in per cent by mass is less
80 than one per cent and equal to or greater than one-tenth per cent, the
81 performance of x-ray diffraction, magnetic susceptibility or
82 petrographic analyses to determine the presence and relative
83 abundance of pyrrhotite in the sample. If no pyrrhotite is present in the
84 sample, the aggregate shall be approved for use for a period of one year
85 and the results of the test shall be filed with the State Geologist. If
86 pyrrhotite is present in the sample, a petrographic analysis shall be
87 conducted to determine the acceptance and use of the aggregate.

88 Sec. 5. (NEW) (*Effective from passage*) (a) For the purposes of this
89 section:

90 (1) "Authority" means the Connecticut Housing Finance Authority
91 created pursuant to section 8-244 of the general statutes;

92 (2) "Captive insurance company" means the captive insurance
93 company established pursuant to section 38a-91vv of the general
94 statutes, as amended by this act;

95 (3) "Pledged revenues" means deposits transferred pursuant to
96 subdivision (2) of subsection (c) of section 38a-331 of the general
97 statutes, as amended by this act, to the Crumbling Foundations
98 Assistance Fund, established pursuant to section 8-441 of the general
99 statutes; and

100 (4) "Revenue bonds" means bonds issued by the authority pursuant
101 to this section.

102 (b) The authority shall have the power to make loans from time to
103 time to the captive insurance company for the purposes of funding the
104 payment of claims by the captive insurance company. Any such loans
105 shall be deposited into the Crumbling Foundations Assistance Fund,
106 established pursuant to section 8-441 of the general statutes, and repaid
107 by the captive insurance company solely from pledged revenues.

108 (c) The authority shall have power to issue bonds in an aggregate
109 principal amount not to exceed one hundred million dollars, the

110 proceeds of which shall be used to make loans to the captive insurance
111 company pursuant to subsection (b) of this section, pay the costs of
112 issuance and capitalized interest and fund any necessary reserves,
113 including, but not limited to, any special capital reserve fund
114 established by the authority. All powers of the authority with respect to
115 the issuance of bonds, including, but not limited to, the establishment of
116 any special capital reserve fund, shall be applicable to the issuance of
117 revenue bonds.

118 (d) To secure the repayment of such bonds, all amounts paid and to
119 be paid to the authority pursuant to section 38a-331 of the general
120 statutes, as amended by this act, are irrevocably assigned and pledged
121 to the authority to secure the due and punctual payment of the principal
122 of and interest on revenue bonds and redemption premium, if any, with
123 respect to such bonds. Such assignment and pledge shall continue in
124 existence if the Crumbling Foundations Assistance Fund, established
125 pursuant to section 8-441 of the general statutes, or captive insurance
126 company are no longer in existence. Such assignment and pledge shall
127 secure all revenue bonds equally and be prior in interest to any claim of
128 any party to such pledged revenues, including any holder of general
129 obligation bonds of the state. The pledge of pledged revenues in this
130 section is made by the state by operation of law through this section,
131 and as a statutory lien is effective without any further act or agreement
132 by the state, and shall be valid and binding from the time the pledge is
133 made, and any revenues or other receipts, funds or moneys so pledged
134 and received by the state shall be subject immediately to the lien of such
135 pledge without any physical delivery thereof or further act. The lien of
136 any such pledge shall be valid and binding as against all parties having
137 claims of any kind in tort, contract, or otherwise against the state,
138 irrespective of whether such parties have notice thereof. In the
139 proceedings authorizing any revenue bonds, the authority may pledge
140 such revenues to secure payment of such revenue bonds and may direct
141 payment of the pledged revenues directly to the trustee under the
142 indenture providing for the issuance of the revenue bonds. Any pledged
143 revenues not required pursuant to the terms of any such indenture to be
144 held or used for payment of the revenue bonds may be released to the

145 authority for payment over to the Crumbling Foundations Assistance
146 Fund, established pursuant to section 8-441 of the general statutes, for
147 the benefit of the captive insurance company.

148 (e) The state covenants with the purchasers and all subsequent
149 owners and transferees of revenue bonds issued by the authority
150 pursuant to this section, in consideration of the acceptance of the
151 payment for the bonds, until such bonds, together with the interest
152 thereon, with interest on any unpaid installment of interest and all costs
153 and expenses in connection with any action or proceeding on behalf of
154 such owners, are fully met and discharged, or unless expressly
155 permitted or otherwise authorized by the terms of each contract and
156 agreement made or entered into by or on behalf of the authority with or
157 for the benefit of such owners, that the state will collect and apply the
158 pledged revenues and other receipts, funds or moneys pledged for the
159 payment of debt service requirements as provided in this section, in
160 such amounts as may be necessary to pay such debt service
161 requirements in each year in which bonds are outstanding and further,
162 that the state (1) will not limit or alter the duties imposed on the
163 Treasurer and other officers of the state, including those of the authority
164 and the captive insurance company, by law and by the proceedings
165 authorizing the issuance of bonds with respect to application of pledged
166 revenues or other receipts, funds or moneys pledged for the payment of
167 debt service requirements as provided in said sections; (2) will not alter
168 the provisions applying pledged revenues to the debt service
169 requirements with respect to bonds or notes, or impose additional fees
170 or levies on the authority; (3) will not issue any bonds, notes or other
171 evidences of indebtedness, other than the bonds, having any rights
172 arising out of said sections or secured by any pledge of or other lien or
173 charge on the pledged revenues or other receipts, funds or moneys
174 pledged for the payment of debt service requirements as provided in
175 said sections, or authorize the authority to issue any such bonds, notes
176 or other evidences of indebtedness; (4) will not create or cause to be
177 created any lien or charge on such pledged amounts, other than a lien
178 or pledge created thereon pursuant to said sections, provided nothing
179 in this subsection shall prevent the state from issuing evidences of

180 indebtedness (A) which are secured by a pledge or lien which is and
181 shall on the face thereof be expressly subordinate and junior in all
182 respects to every lien and pledge created by or pursuant to said sections;
183 or (B) which are secured by a pledge of or lien on moneys or funds
184 derived on or after such date as every pledge or lien thereon created by
185 or pursuant to said sections shall be discharged and satisfied; (5) will
186 carry out and perform, or cause to be carried out and performed, each
187 and every promise, covenant, agreement or contract made or entered
188 into by the state or on its behalf with the owners of any bonds; (6) will
189 not in any way impair the rights, exemptions or remedies of such
190 owners; and (7) will not limit, modify, rescind, repeal or otherwise alter
191 the rights or obligations of the appropriate officers of the state to impose,
192 maintain, charge or collect the taxes, fees, charges and other receipts
193 constituting the pledged revenues as may be necessary to produce
194 sufficient revenues to fulfill the terms of the proceedings authorizing the
195 issuance of the bonds. The state may amend the amount of the surcharge
196 imposed pursuant to section 38a-331 of the general statutes, as amended
197 by this act, provided such amendment, had it been in effect, would not
198 have reduced the pledged revenues for any twelve consecutive months
199 within the preceding fifteen months to less than an amount three times
200 the maximum debt service payable on bonds issued and outstanding
201 under this section for the current or any future fiscal year. The state may
202 provide that any pledged revenues payable by the authority to the
203 Crumbling Foundations Assistance Fund, established pursuant to
204 section 8-441 of the general statutes, for the benefit of the captive
205 insurance company may be paid over instead to the state or any of its
206 agencies or instrumentalities or pledged for any other purpose. The
207 authority may include this covenant of the state in any agreement with
208 the owner of any such bonds.

209 (f) The captive insurance company, the authority, the Commissioner
210 of Housing, the Insurance Commissioner and the State Treasurer are
211 each authorized to enter into agreements and memoranda of
212 understanding, in accordance with this section and in addition to any
213 other authorization for such agreements and memoranda of
214 understanding, as each shall consider appropriate to advance the

215 purposes of this section. In any such agreement or memoranda, the
216 captive insurance company is authorized to grant a security interest, if
217 any, in its right, title and interest in the pledged revenues to the
218 authority and to the trustee of the authority's revenue bonds, and make
219 filings with respect thereto pursuant to the filing provisions of part 5 of
220 article 9 of title 42a, provided no such grant or filing shall have the effect
221 of establishing any entitlement of the captive insurance company to
222 such pledged revenues or imply that the state shall have waived
223 sovereign immunity with respect thereto.

224 Sec. 6. Section 38a-331 of the general statutes is repealed and the
225 following is substituted in lieu thereof (*Effective July 1, 2021*):

226 (a) (1) There is imposed a twelve-dollar surcharge on the issuance or
227 renewal of each insurance policy providing:

228 (A) Personal risk insurance coverage for an owned dwelling in this
229 state with four or fewer units, except for a mobile home;

230 (B) Coverage for an individual unit in this state that is part of a
231 condominium, as such terms are defined in section 47-68a; or

232 (C) Coverage for an individual unit in this state that is part of a
233 common interest community and exclusively used for residential
234 purposes, as such terms are defined in section 47-202.

235 (2) The surcharge imposed under this subsection shall be assessed on
236 insurance policies issued or renewed during the period beginning on
237 January 1, 2019, and ending on December 31, **[**2029**]** <u>2041</u>. Such
238 surcharge is not premium and shall not be considered premium for any
239 purpose.

240 (b) Payment of the surcharge imposed under subsection (a) of this
241 section shall be the obligation of the person that is first listed as an
242 insured under the policy, provided collection and remittance of such
243 surcharge may be effected in such manner as the insurer, insured and
244 any mortgagee may reasonably determine. Such surcharge is payable in
245 full upon commencement or renewal of coverage, and no portion of

246 such surcharge shall be reimbursed, whether on policy cancellation or
247 otherwise.

248 (c) (1) Acting [on behalf of, and] as a collection agent [of the Healthy
249 Homes Fund established pursuant to section 8-446] for the required
250 deposit of funds as prescribed by this section, each admitted insurer, or,
251 for nonadmitted insurers, one or more surplus lines brokers licensed
252 pursuant to section 38a-794 procuring from the nonadmitted insurer an
253 insurance policy providing coverage of a type described in subdivision
254 (1) of subsection (a) of this section, shall remit to the Insurance
255 Commissioner, not later than the thirtieth day of April annually, all
256 surcharges imposed under subsection (a) of this section on the named
257 insured that were collected during the calendar year next preceding.
258 Each such remittance shall include documentation, in the form and
259 manner prescribed by the commissioner, to substantiate the total
260 surcharge amount being remitted by such insurer or licensee.

261 (2) All such remittances under subdivision (1) of this subsection,
262 except for the amount of remittances equal to the cost of funding an
263 administrative officer position at the Insurance Department to facilitate
264 the surcharge collection, shall be deposited [in the Healthy Homes Fund
265 established in section 8-446. Not later than thirty days after such deposit
266 in the Healthy Homes Fund, eighty-five per cent of such deposits shall
267 be transferred to the Crumbling Foundations Assistance Fund
268 established in section 8-441.] as follows: (A) Eighty-five per cent of such
269 deposits shall be transferred, in accordance with this section, to the
270 Connecticut Housing Finance Authority created pursuant to section 8-
271 244, or if the authority shall not have made any loans to the captive
272 insurance company established pursuant to section 38a-91vv, as
273 amended by this act, to the Crumbling Foundations Assistance Fund
274 established pursuant to section 8-441, and (B) the balance shall be
275 deposited into the Healthy Homes Fund established pursuant to section
276 8-446. Neither the Crumbling Foundations Assistance Fund nor the
277 captive insurance company shall have any right to any of such
278 remittances except under this section or any right to cause such
279 remittances to continue.

(3) The surcharge imposed under subsection (a) of this section shall constitute a special purpose assessment for the purposes of section 12-211.

(d) The commissioner may adopt regulations, in accordance with chapter 54, to implement the provisions of this section.

Sec. 7. (*Effective July 1, 2021*) Not later than July 1, 2022, the captive insurance company established pursuant to section 38a-91vv of the general statutes, as amended by this act, shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committees of the General Assembly having cognizance of matters relating to insurance and planning and development. Such report shall include, but not be limited to, an analysis of the extent of the damage caused to concrete foundations in nonresidential buildings in the state due to the presence of pyrrhotite in such concrete.

Sec. 8. Section 8-446 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(a) There is established an account to be known as the "Healthy Homes Fund" which shall be a separate, nonlapsing account within the General Fund. The account shall contain any moneys required by law to be deposited in the account. Moneys in the account shall be expended by the Department of Housing for the purposes of:

(1) Funding of not more than one million dollars, from remittances transferred pursuant to section 38a-331, as amended by this act, for the period beginning January 1, 2019, and ending December 31, 2019, shall be remitted to the Department of Economic and Community Development to be used for grants-in-aid to homeowners with homes located in the immediate vicinity of the West River in the Westville section of New Haven and Woodbridge for structurally damaged homes due to subsidence and to homeowners with homes abutting the Yale Golf Course in the Westville section of New Haven for damage to such homes from water infiltration or structural damage due to

312 subsidence; [and]

313 (2) Funding a program, and any related administrative expense, to
314 reduce health and safety hazards in residential dwellings in
315 Connecticut, including, but not limited to, lead, radon and other
316 contaminants or conditions, through removal, remediation, abatement
317 and other appropriate methods. For purposes of this subdivision,
318 "administrative expense" means any administrative or other cost or
319 expense incurred by the Department of Housing in carrying out the
320 provisions of this section, including, but not limited to, the hiring of
321 necessary employees and entering into necessary contracts; [.] and

322 (3) Not later than July 15, 2021, funding of not more than one hundred
323 seventy-five thousand dollars, from remittances transferred pursuant to
324 section 38a-331, as amended by this act, for the fiscal year commencing
325 July 1, 2021, shall be remitted to the captive insurance company
326 established pursuant to section 38a-91vv of the general statutes, as
327 amended by this act, to be used for the research and development of the
328 report described in section 7 of this act and any related administrative
329 expense. Such sum shall not be considered in calculating the total funds
330 allocated or made available to the captive insurance company used for
331 administrative or operational costs pursuant to section 38a-91vv, as
332 amended by this act.

333 (b) The Department of Housing shall notify the Department of Public
334 Health not later than thirty days after the deposit of remittances in the
335 Healthy Homes Fund pursuant to subdivision (2) of subsection (c) of
336 section 38a-331, as amended by this act. Not later than thirty days after
337 the deposit of remittances pursuant to subdivision (2) of subsection (c)
338 of section 38a-331, as amended by this act, the Department of Public
339 Health shall notify each municipal health department in the state
340 annually regarding funds available pursuant to the Healthy Homes
341 Fund established pursuant to subsection (a) of this section.

342 (c) Not later than January 1, 2020, and annually thereafter, the
343 Commissioner of Housing shall report to the joint standing committees
344 of the General Assembly having cognizance of matters relating to

345 housing, planning and development and appropriations and the
346 budgets of state agencies, in accordance with section 11-4a, regarding
347 the status of the Healthy Homes Fund established pursuant to this
348 section and all moneys deposited into and expended by the Department
349 of Housing pursuant to said account. Any such report may be submitted
350 electronically.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	29-265d
Sec. 2	*July 1, 2021*	38a-91vv(i)
Sec. 3	*July 1, 2021*	New section
Sec. 4	*from passage*	New section
Sec. 5	*from passage*	New section
Sec. 6	*July 1, 2021*	38a-331
Sec. 7	*July 1, 2021*	New section
Sec. 8	*July 1, 2021*	8-446

PD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 $	FY 23 $
Department of Housing	HHF - Cost	175,000	None
CHFA	Various - See Below	See Below	See Below

Note: HHP=Healthy Homes Fund

Municipal Impact:

Municipalities	Effect	FY 22 $	FY 23 $	FY 24 $
Various Municipalities	Potential Revenue Gain	None	None	See Below
Various Municipalities	Precludes Revenue Gain	None	None	See Below

Explanation

The bill makes various changes related to the issue of crumbling concrete foundations that result in the fiscal impacts described below.

Section 1 prevents municipalities, once they have adjusted the assessment of a home with a defective concrete foundation, from reassessing that home until the foundation has been repaired or replaced. This precludes any revenue gain a municipality might experience if it chose to increase the assessment of a home with a defective concrete foundation prior to such foundation being repaired.

Section 2 eliminates the June 30, 2022 sunset date for the captive insurer, Connecticut Foundations Solutions Indemnity Company Inc. (CFSIC), which allows the captive to continue operating using state

funding already authorized for that purpose.[1] As the captive spends approximately $800,000 of its revenue annually on operating expenses, under the bill that operating cost is anticipated to continue in FY 23 and future years.[2]

Sections 3 and 4 require the State Geologist to receive certain reports and the Department of Consumer Protection (DCP), in consultation with the State Geologist, to write regulations regarding the testing of aggregates produced by quarries when producing concrete. These provisions result in no fiscal impact because DCP has the expertise to meet the requirements of the bill.

Section 5 authorizes the Connecticut Housing Finance Authority (CHFA) to issue revenue bonds based on revenues currently directed to the Crumbling Foundations Assistance Fund from the Healthy Homes Fund. To the extent that such bonds are issued, there would be a one-time increase in funds available (through loans allowed in the bill from CHFA to the captive insurer) to the Crumbling Foundations Assistance Fund at the time bonds were sold, followed by a decrease of funds available on an annual basis until the bonds were repaid.

As an example, if the maximum $100 million of bonds were issued for these purposes with a 20-year repayment term with level payments of $8 million annually, the Crumbling Foundations Assistance Fund would see a $100 million increase of funds available when sold, followed by an $8 million annual decrease in funds available for 20 years ($160 million total of debt repayment and foregone future revenue). Actual bond repayment terms would be subject to market rates and terms agreed upon within the bond covenant.

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[1] CFSIC distributes financial assistance to homeowners with foundations crumbling due to the presence of pyrrhotite using state funds deposited in the Crumbling Foundations Assistance Fund. The state has authorized $100 million in bond funds and about 85 percent of the revenue from a $12 annual surcharge on homeowners' insurance policies (in place through 2029) to provide such assistance.

[2] Under current law, the captive or its successor is expected to continue minimal operations for up to 36 months after sunset to run off accumulated liabilities, so not all FY 23 operating expenses under the bill are additional.

The bill does not specify the terms of bonds, nor require CHFA to issue the bonds at all. CHFA would bear the costs of issuing any bonds, which, as specified in the bill, could be repaid using bond proceeds. No ongoing costs are anticipated for CHFA, as it is not anticipated that CHFA would move forward with a bond issuance where expected revenues would be less than contractual debt service payments.

Section 6 facilitates the potential loans from CHFA to CFSIC but does not otherwise result in a practical fiscal impact in FY 22 or FY 23. Technically, it prevents the funds destined for the Crumbling Foundations Assistance Fund under current law from being deposited temporarily in the Healthy Homes Fund before being transferred to the Crumbling Foundations Assistance Fund within a month. Section 6 also extends the duration of the Healthy Homes Surcharge past 2029, as further described below.

Sections 7 and 8 result in a one-time cost to the Healthy Homes Fund of up to $175,000 in FY 22 to provide funding for CFSIC to research and report on the extent of crumbling foundations in nonresidential buildings. This will result in less funding being available for the lead removal, remediation and abatement program under the Department of Housing (DOH) that is funded from the same account.

The bill results in a revenue gain to municipalities associated with homeowners impacted by crumbling foundations to the extent that it allows more homeowners to have their foundations remediated. Under current law, as of September 2020, at least 845 properties in at least 10 communities have had their assessments reduced due to foundation problems. This has resulted in an estimated revenue loss to those municipalities of about $2.7 million cumulatively. The bill results in a revenue gain that would vary based on the assessments of such properties after foundation remediation. It is unknown how much of this revenue gain would occur in FY 23 and how much would occur in the out years.

The Out Years

The annualized ongoing fiscal impacts identified above would continue into the future subject to inflation and the terms of any bonds issued.

Additionally, **section 6** extends the final year of the $12 Healthy Homes Surcharge on homeowners' insurance policies from 2029 to 2041. This results in a revenue gain of approximately $12.5 million to the state for twelve additional years beginning in FY 31. The actual amount would depend on the number of eligible insurance policies each year. The total additional revenue gain over time is anticipated to be approximately $127 million for use by CFSIC and $22 million for the lead removal, remediation and abatement program under DOH.

Sources: *Connecticut Foundation Solutions Indemnity Company, Inc. 2019 and 2020 Audited Financial Statements*
Department of Housing Healthy Homes Fund Report

OLR Bill Analysis
sHB 6646

AN ACT CONCERNING CRUMBLING CONCRETE FOUNDATIONS.

SUMMARY

This bill makes the Connecticut Foundation Solutions Indemnity Company (CFSIC) permanent by eliminating the current June 30, 2022, termination date. CFSIC is the captive insurance company created by law to distribute money to homeowners with concrete foundations that are deteriorating due to the presence of pyrrhotite.

The bill allows the Connecticut Housing Finance Authority (CHFA) to make loans to CFSIC so that it may pay claims. It authorizes CHFA to issue up to $100 million in revenue bonds to fund the loans and secures the bonds with a portion of Healthy Homes surcharge revenue. It also extends the Healthy Homes insurance surcharge sunset date by 12 years, until December 31, 2041. Under current law, the surcharge sunsets on December 31, 2029.

The bill requires the Department of Consumer Protection (DCP) commissioner to adopt regulations establishing standards for aggregate testing.

The bill also:

1. eliminates the five-year cap on reduced assessments for properties made with defective concrete (§ 1);
2. requires Connecticut concrete aggregate quarries to prepare a geological source report (GSR) every four years and submit it to the state geologist (§ 3); and
3. requires CFSIC to study the extent of pyrrhotite-related foundation damage in nonresidential buildings and appropriates

$175,000 from the Healthy Homes fund for it to do so.

EFFECTIVE DATE: July 1, 2021, except the provisions on assessments (§ 1), DCP regulations (§ 4), and bonding (§ 5) are effective upon passage.

§ 5 — CHFA LOANS TO CFSIC

The bill allows CHFA to make loans to CFSIC for the purposes of funding CFSIC claim payments. Under the bill, any loans must be deposited into the Crumbling Foundations Assistance Fund and repaid by CFSIC from Healthy Homes insurance surcharge revenue that is transferred to the fund (i.e., pledged revenues, see below).

Authorization to Issue Bonds

The bill authorizes CHFA to issue up to $100 million in revenue bonds for these purposes. Bond proceeds must be used to make loans to CFSIC, pay the issuing and capitalized interest costs, and fund any necessary reserves, including any special capital reserve fund CHFA establishes. The bill makes all CHFA bonding powers applicable to these new bonds (e.g., establishing special capital reserve funds).

Pledged Revenues

The bill irrevocably assigns and pledges the "pledged revenues" to secure bond repayment, including interest and redemption premiums. "Pledged revenues" is the portion of Healthy Homes surcharge revenue that is transferred to the Crumbling Foundations Assistance Fund. (However, in section 6, if CHFA makes any loans (and, thus, has issued bonds), the portion of surcharge revenue that is currently transferred to the fund is instead transferred directly to CHFA. It is unclear whether these surcharges would be considered pledged revenue if they are not transferred to the fund.)

The assignment and pledge continue even if the Crumbling Foundations Assistance Fund or CFSIC no longer exist. It secures all bonds described in the bill equally and supersedes any other party's claim to the pledged revenues, including holders of state general obligation (GO) bonds.

Under the bill, the pledge is effectively a lien against pledged revenues that takes effect when the bill does without any further action by the state. Pledged revenue is immediately subject to the lien when the state receives it, and the lien is valid and binding against all parties with claims against the state.

In bond authorization proceedings, CHFA may pledge the revenues to secure bond repayment and direct the payment of pledged revenues directly to the trustee under the bond indenture. Any pledged revenues not required to repay the bonds under the indenture's terms may be released back to the Crumbling Foundations Assistance Fund.

Commitments to Bondholders

The bill makes certain commitments to bondholders concerning the revenue bonds it authorizes CHFA to issue and allows the authority to include the covenant in any bondholder agreement.

Under the bill, the state pledges to collect and apply the pledged revenues in the amounts necessary to pay bond debt service until the bonds and any interest or other costs are fully paid off, unless otherwise authorized under a contract between CHFA and bondholders. The bill also promises that the state will perform, or cause to be performed, every promise, covenant, agreement, or contract with bondholders and will not:

1. limit or alter the duties imposed on the treasurer, state officers, CHFA, or CFSIC as they relate to the application of pledged revenues;
2. alter the provisions applying pledged revenues to the debt service requirements or impose additional fees or levies on CHFA;
3. issue any bonds or other debt secured by the same pledged revenues;
4. create or cause to be created any other lien or charge on the

pledged amounts; or

5. impair the rights, exemptions, or remedies of bondholders.

The state may also allow any pledged revenues CHFA pays to the Crumbling Foundations Assistance Fund to instead be paid to the state, its agencies, or any other pledged purpose.

Debt Service Coverage. The bill generally promises that the state will not alter state officers' rights or obligations to impose, maintain, charge, or collect the pledged revenues as necessary to produce sufficient revenues to fulfill the bond proceedings' terms.

But it allows the state to amend the Healthy Homes Surcharge amount as long as it can maintain a specified debt service coverage ratio. Specifically, it may amend the surcharge if doing so would not have reduced pledged revenues for any 12 consecutive months within the preceding 15 months to an amount less than three times the maximum debt service payable on outstanding bonds in the current or any future fiscal year.

Other Permissible State Debt. The act specifies that its commitments to bondholders do not prevent the state from issuing debt (1) secured by a pledge or lien subordinate and junior to the liens and pledges created under the act or (2) secured by a pledge of or lien on amounts derived on or after the date the revenue bonds' pledges or liens are discharged and satisfied.

Agreements and MOUs

Under the bill, CFSIC, CHFA, the housing and insurance commissioners, and the treasurer are authorized to enter into agreements and MOUs, as they consider appropriate, for the purposes of the loans the bill authorizes. In any agreement or MOU, CFSIC is authorized to grant a security interest, title, and interest in pledged revenues to CHFA and to the trustee of CHFA's bonds, but the bill specifies that any such grant does not establish any right for CFSIC to the pledged revenue or imply the state has waived sovereign immunity.

§ 6 — HEALTHY HOMES INSURANCE SURCHARGE

Existing law imposes an annual $12 surcharge on the named insured under certain homeowners insurance policies, known as the Healthy Homes surcharge.

Under current law, this revenue, less the administrative collection costs, is deposited into the Healthy Homes Fund, and 85% of the deposit is then transferred to the Crumbling Foundations Assistance Fund within 30 days after the deposit. (The remaining 15% stays in the Healthy Homes Fund.)

Under the bill, the 85% share is instead directly transferred to CHFA, unless it has not made any loans to CFSIC, in which case it is deposited straight into the Crumbling Foundations Assistance Fund. The balance (15%) is then deposited into the Healthy Homes Fund.

The bill specifies that neither the Crumbling Foundations Assistance Fund, nor CFSIC, have any right to the Healthy Homes surcharge remittances except under the bill's provisions, nor any right to cause the remittances to continue.

§§ 3 & 4 — GSR REQUIREMENT AND DCP REGULATIONS

GSR (§ 3)

Beginning by January 1, 2022, the bill requires the operator of each Connecticut quarry that produces concrete aggregate to quadrennially prepare a geological source report (GSR) and submit it to the state.

The quadrennial GSR must be prepared as the state geologist requires and must include:

1. an operations plan and a description of the operator's mining, processing, storage, and quality control methods;
2. a description of the products the quarry will produce;
3. a description of the characteristics of the aggregate to be excavated, prepared by a qualified geologist;

4. the results of an inspection of face material and geologic log analysis, completed in the prior year by a qualified geologist; and

5. core sample analyses completed in the prior year by a qualified geologist, unless the state geologist determines the quarry's performance history is satisfactory.

DCP Regulations on Aggregate Testing

The bill requires DCP's commissioner, in consultation with the state geologist, to adopt regulations developing standards for testing concrete aggregate produced by quarries. The standards must require (1) a total sulfur content ("total S") test and (2) identification of the presence of pyrrhotite. (If aggregate has a high total S concentration, it is not suitable for structural concrete. Measuring aggregate's total S enables one to develop a conservative estimate of the maximum pyrrhotite concentration (many minerals other than pyrrhotite contain sulfur).)

The regulations must require the performance of a rapid total S test on a 10-pound aggregate sample using one of the following methods:

1. x-ray fluorescence analysis,

2. purge and trap gas chromatography analysis, or

3. analysis by combustion furnace.

The regulations must specify that if the results of the total S test show that the sample's total S is:

1. less than 0.1% (by mass), then the aggregate must be approved for use for four years and the test results must be filed with the state geologist;

2. 1% or more (by mass), then the aggregate may not be used (presumably, the material can be used for purposes other than concrete aggregate); and

3. 0.1% or more, but less than 1% (by mass), then the sample must be further tested, as described below (presumably, this testing is only required if the producer wants to use the material for concrete aggregate).

Further Testing. If further testing is required after the total S test (see above), the regulations must require testing the sample for the presence and relative abundance (concentration) of pyrrhotite using one of the following methods:

1. x-ray diffraction,
2. magnetic susceptibility, or
3. another type of petrographic analysis.

The regulations must specify that if further testing reveals no pyrrhotite in the sample, the aggregate must be approved for use for one year and the test results must be filed with the state geologist. If pyrrhotite is present, further petrographic analysis must be done to determine whether the aggregate is acceptable for use.

§ 1 — REDUCED ASSESSMENT FOR PROPERTIES WITH DEFECTIVE FOUNDATIONS

By law, municipal assessors or their staff must inspect and reassess residential properties with foundations made from defective concrete at the property owner's request. Under current law, the adjusted assessment must reflect the property's current value and is valid for five assessment years, unless the foundation is repaired or replaced sooner. The bill eliminates the five-year maximum, thus allowing property owners to benefit from a reduced assessment until their foundation is repaired or replaced. As under current law, the reduced assessment's duration supersedes the law requiring revaluation every five years. Thus, the bill appears to prohibit the assessment from being updated during any future revaluation, unless the foundation is repaired or replaced.

§§ 7 & 8 — STUDY OF NONRESIDENTIAL CRUMBLING CONCRETE DAMAGE

By July 1, 2022, the bill requires CFSIC to submit a report to the Insurance and Real Estate and Planning and Development committees analyzing the extent of pyrrhotite-related concrete foundation damage in non-residential buildings.

By July 15, 2021, the bill also requires the Department of Housing to remit up to $175,000 from surcharge remittances transferred to the Healthy Homes fund for FY 22 to CFSIC for research, development, and administrative expenses related to the report described above. However, the bill specifies that this amount must not be used in calculating the total funds allocated or made available to CFSIC for administrative or operational expenses. (By law, CFSIC may not spend more than 10% of its annual allocations on administrative or operational costs (CGS § 38-91vv(c)).)

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute
Yea 26 Nay 0 (03/31/2021)