



House of Representatives

File No. 776

General Assembly

January Session, 2021 **(Reprint of File No. 550)**

Substitute House Bill No. 6646
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
June 1, 2021

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 Section 29-265d of the general statutes is repealed and the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 notwithstanding the provisions of section 12-62.] until the next
16 revaluation becomes effective or the concrete foundation is repaired or
17 replaced, and the assessor, member of the assessor's staff or person
18 designated by the assessor adjusts the assessment of the residential
19 building, whichever is earlier.

20 (b) Notwithstanding the provisions of section 12-62, any property
21 that has had its assessment adjusted pursuant to subsection (a) of this
22 section shall be assessed during each revaluation cycle to reflect its
23 current value.

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

34 Sec. 2. Subdivision (2) of subsection (b) of section 38a-91vv of the
35 general statutes is repealed and the following is substituted in lieu
36 thereof (*Effective July 1, 2021*):

37 (2) Establish a board of directors who shall serve in a volunteer
38 capacity. The membership of the board of directors shall include, but
39 need not be limited to, a real estate agent or broker, two owners of
40 residential buildings who have concrete foundations that have
41 deteriorated due to the presence of pyrrhotite, a chief executive or such
42 chief executive's designee of a municipality in which residential
43 buildings with concrete foundations that have deteriorated due to the
44 presence of pyrrhotite are located, an individual with professional
45 investment experience and currently registered as an investment
46 adviser pursuant to title 36b, the executive directors of the Capitol

47 Region Council of Governments and the Northeastern Connecticut
48 Council of Governments or such executive directors' designees and
49 representatives from the insurance and banking industries, who shall
50 not have professional relationships with any bank or insurance
51 company that has a financial interest in residential buildings subject to
52 the provisions of this section and sections 7-374b, 8-441, 8-442, 8-443, 8-
53 444, subparagraph (B) of subdivision (20) of subsection (a) of section 12-
54 701 and section 29-265f. The speaker, the minority leader of the House
55 of Representatives, the president pro tempore of the Senate and the
56 Senate Republican president pro tempore shall each appoint a member
57 of the General Assembly as a nonvoting, ex-officio member of the board
58 of directors. The Governor shall appoint two members to the board of
59 directors, one of whom shall be appointed as a nonvoting, ex-officio
60 member. It shall not constitute a conflict of interest for a member of the
61 board of directors, who is the owner of a residential building which has
62 a concrete foundation that has deteriorated due to the presence of
63 pyrrhotite, or the spouse or dependent child of such member, to apply
64 for or receive assistance from the captive insurance company
65 established under this section, to repair or replace such concrete
66 foundation, provided such member shall abstain from deliberation,
67 action or vote by the board of directors in specific respect to such
68 member's application or the application of such spouse or dependent
69 child;

70 Sec. 3. Subsection (i) of section 38a-91vv of the general statutes is
71 repealed and the following is substituted in lieu thereof (*Effective July 1,*
72 *2021*):

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

77 Sec. 4. (*Effective July 1, 2021*) Not later than January 1, 2023, the captive
78 insurance company established pursuant to section 38a-91vv of the
79 general statutes, as amended by this act, shall submit a report, in

80 accordance with the provisions of section 11-4a of the general statutes,
81 to the joint standing committees of the General Assembly having
82 cognizance of matters relating to insurance and planning and
83 development. Such report shall include, but not be limited to, an
84 analysis of the extent of the damage caused to concrete foundations in
85 nonresidential buildings in the state due to the presence of pyrrhotite in
86 such concrete.

87 Sec. 5. Section 8-446 of the general statutes is repealed and the
88 following is substituted in lieu thereof (*Effective July 1, 2021*):

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

94 (1) Funding of not more than one million dollars, from remittances
95 transferred pursuant to section 38a-331 for the period beginning January
96 1, 2019, and ending December 31, 2019, shall be remitted to the
97 Department of Economic and Community Development to be used for
98 grants-in-aid to homeowners with homes located in the immediate
99 vicinity of the West River in the Westville section of New Haven and
100 Woodbridge for structurally damaged homes due to subsidence and to
101 homeowners with homes abutting the Yale Golf Course in the Westville
102 section of New Haven for damage to such homes from water infiltration
103 or structural damage due to subsidence; [and]

104 (2) Funding a program, and any related administrative expense, to
105 reduce health and safety hazards in residential dwellings in
106 Connecticut, including, but not limited to, lead, radon and other
107 contaminants or conditions, through removal, remediation, abatement
108 and other appropriate methods. For purposes of this subdivision,
109 "administrative expense" means any administrative or other cost or
110 expense incurred by the Department of Housing in carrying out the
111 provisions of this section, including, but not limited to, the hiring of

112 necessary employees and entering into necessary contracts; and

113 (3) Funding of not more than one hundred seventy-five thousand
114 dollars, from remittances transferred pursuant to section 38a-331 for the
115 period beginning January 1, 2021, and ending December 31, 2021, shall
116 be remitted to the captive insurance company established pursuant to
117 section 38a-91vv, as amended by this act, to be used for the research and
118 development of the report described in section 4 of this act and any
119 related administrative expense. Such sum shall not be considered in
120 calculating the total funds allocated or made available to the captive
121 insurance company used for administrative or operational costs
122 pursuant to section 38a-91vv, as amended by this act.

123 (b) The Department of Housing shall notify the Department of Public
124 Health not later than thirty days after the deposit of remittances in the
125 Healthy Homes Fund pursuant to subdivision (2) of subsection (c) of
126 section 38a-331. Not later than thirty days after the deposit of
127 remittances pursuant to subdivision (2) of subsection (c) of section 38a-
128 331, the Department of Public Health shall notify each municipal health
129 department in the state annually regarding funds available pursuant to
130 the Healthy Homes Fund established pursuant to subsection (a) of this
131 section.

132 (c) Not later than January 1, 2020, and annually thereafter, the
133 Commissioner of Housing shall report to the joint standing committees
134 of the General Assembly having cognizance of matters relating to
135 housing, planning and development and appropriations and the
136 budgets of state agencies, in accordance with section 11-4a, regarding
137 the status of the Healthy Homes Fund established pursuant to this
138 section and all moneys deposited into and expended by the Department
139 of Housing pursuant to said account. Any such report may be submitted
140 electronically.

141 Sec. 6. Subdivision (28) of subsection (b) of section 1-210 of the general
142 statutes is repealed and the following is substituted in lieu thereof
143 (*Effective July 1, 2021*):

144 (28) Any [documentation provided to or obtained] records
145 maintained or kept on file by an executive branch agency or public
146 institution of higher education, including documentation [provided]
147 prepared or obtained prior to May 25, 2016, relating to claims of or
148 testing for faulty or failing concrete foundations in residential buildings
149 [by the owners of such residential buildings,] and documents or
150 materials prepared by an executive branch agency or public institution
151 of higher education relating to such [documentation, for seven years
152 after the date of receipt of the documentation or seven years after May
153 25, 2016, whichever is later] records.

154 Sec. 7. Section 29-265e of the general statutes is repealed and the
155 following is substituted in lieu thereof (*Effective July 1, 2021*):

156 Any documentation provided to or obtained by an executive branch
157 agency, including documentation provided or obtained prior to May 25,
158 2016, relating to claims of faulty or failing concrete foundations in
159 residential buildings by the owners of such residential buildings, and
160 documents prepared by an executive branch agency relating to such
161 documentation, shall be maintained as confidential by such agency. [for
162 not less than seven years after the date of receipt of the documentation
163 or seven years after May 25, 2016, whichever is later.]

164 Sec. 8. (NEW) (*Effective July 1, 2021*) (a) For the purposes of this
165 section, "qualified geologist" means a geologist certified by the
166 American Institute of Professional Geologists, licensed by the National
167 Association of State Boards of Geology or certified or licensed by
168 another organization deemed suitable by the State Geologist.

169 (b) (1) Not later than January 1, 2022, the operator of any quarry
170 established on or before July 1, 2021, that produces aggregate for use in
171 concrete intended for use or sale shall prepare a geological source report
172 and provide such report to the State Geologist and Commissioner of
173 Energy and Environmental Protection. Such report shall be prepared in
174 a form and manner prescribed by the commissioner, and shall include,
175 but need not be limited to, (A) the mining, processing, storage and

176 quality control methods utilized by such operator, (B) a description of
177 the characteristics of the aggregate to be excavated at such quarry,
178 which shall be prepared by a qualified geologist, (C) a description of the
179 products to be produced by such quarry, (D) a copy of the results of an
180 inspection of face material and geologic log analysis completed by a
181 qualified geologist, and (E) analyses of core samples, completed by a
182 qualified geologist, unless such quarry is active and has a satisfactory
183 performance history as determined by the commissioner. Not later than
184 January 1, 2026, and every four years thereafter, such operator shall
185 update such report and provide such updated report to the State
186 Geologist and commissioner.

187 (2) The operator of any quarry established after July 1, 2021, that
188 intends to produce aggregate for use in concrete intended for use or sale
189 shall prepare a geological source report, described in subdivision (1) of
190 this subsection, and provide such report to the State Geologist and
191 commissioner prior to offering such aggregate for use or sale. Such
192 operator shall update such report every four years thereafter and
193 provide such updated report to the State Geologist and commissioner.

194 (3) Not later than January 1, 2022, and annually thereafter, the
195 operator of each quarry that produces aggregate for use in concrete
196 intended for use or sale shall provide such quarry's operations plan to
197 the State Geologist and commissioner.

198 Sec. 9. (NEW) (*Effective July 1, 2021*) (a) Except as provided in
199 subsection (c) of this section, not later than July 1, 2022, and not less than
200 annually thereafter, the operator of each quarry that sells or provides
201 aggregate intended for use in concrete, shall submit a written report to
202 the Commissioner of Energy and Environmental Protection and the
203 State Geologist, containing the results of a third-party test of the sulfur
204 content of such aggregate. Such test shall be conducted by a third-party
205 certified or accredited to conduct testing in accordance with American
206 Society for Testing Materials standard C33/C33M, Standard
207 Specification for Concrete Aggregates. Such certification or
208 accreditation shall be provided by the International Organization for

209 Standardization, United States Army Corps of Engineers, American
210 Association of State Highway and Transportation Officials,
211 International Accreditation Service or a similar organization.

212 (b) Each test conducted pursuant to subsection (a) of this section shall
213 include:

214 (1) The performance of a rapid total sulfur test on a ten-pound sample
215 of aggregate by any of the following means: (A) X-ray fluorescence
216 analysis, (B) purge and trap gas chromatography analysis, (C) analysis
217 by combustion furnace, or (D) other technology deemed at least as
218 accurate by the State Geologist. Representative samples shall be
219 collected and managed in accordance with American Society for Testing
220 and Materials standard D75/D75M, Standard Practice for Sampling
221 Aggregates, reduced to a size appropriate for laboratory testing and
222 pulverized for analysis;

223 (2) If the total sulfur content of the sample in per cent by mass is less
224 than one per cent and equal to or greater than one-tenth per cent, the
225 performance of x-ray diffraction, magnetic susceptibility or
226 petrographic analyses to determine the presence and relative
227 abundance of pyrrhotite in the sample; and

228 (3) If the results of the test conducted pursuant to this section reveal
229 that pyrrhotite is present in the sample, a petrographic analysis based
230 on American Society for Testing and Materials standards C295,
231 Standard Guide for Petrographic Examination of Aggregates for
232 Concrete, and C294, Standard Descriptive Nomenclature for
233 Constituents of Concrete Aggregates, shall be conducted to determine
234 the acceptance and use of the aggregate.

235 (c) If the results of the test conducted pursuant to this section reveal
236 that the total sulfur content of the sample in per cent by mass is less than
237 one-tenth per cent, an operator may sell or provide such aggregate for
238 use in concrete for a period of four years beginning on the date of receipt
239 of such test results and shall not be required to submit a report pursuant
240 to subsection (a) of this section during such period.

241 (d) If the results of the test conducted pursuant to this section reveal
242 that the total sulfur content of the sample in per cent by mass is equal to
243 or greater than one per cent, an operator shall not sell or provide such
244 aggregate for use in concrete.

245 (e) If the results of the test performed pursuant to this section reveal
246 that the total sulfur content of the sample in per cent by mass is less than
247 one per cent and equal to or greater than one-tenth per cent and (1) no
248 pyrrhotite is present, an operator may sell or provide such aggregate for
249 use in concrete for a period of one year beginning on the date of receipt
250 of such test results; and (2) pyrrhotite is present, an operator shall not
251 sell or provide such aggregate in a manner inconsistent with the
252 acceptance and use indicated by the results of a petrographic analysis
253 undertaken pursuant to this section or requirement or restriction
254 established by the Commissioner of Energy and Environmental
255 Protection pursuant to subsection (f) of this section.

256 (f) The Commissioner of Energy and Environmental Protection, in
257 consultation with the State Geologist, may, if the results of the test
258 performed pursuant to this section reveal that the total sulfur content of
259 the sample in per cent by mass is less than one per cent and equal to or
260 greater than one-tenth per cent and pyrrhotite is present, (1) require the
261 operator of the quarry to conduct additional testing, including but not
262 limited to a mortar bar expansion test pursuant to American Society for
263 Testing and Materials standard C1293, Standard Test Method for
264 Determination of Length Change of Concrete Due to Alkali-Silica
265 Reaction, or C227, Standard Test Method for Potential Alkali Reactivity
266 of Cement-Aggregate Combinations; and (2) implement restrictions on
267 the sale or use of aggregate from such quarry in concrete.

268 (g) The Commissioner of Energy and Environmental Protection may
269 adopt regulations, in accordance with chapter 54 of the general statutes,
270 to implement the provisions of this section. Such regulations shall
271 include, but not be limited to, definitions for the terms "rapid total sulfur
272 test", "x-ray fluorescence analysis", "purge and trap gas chromatography
273 analysis", "analysis by combustion furnace", "x-ray diffraction",

274 "magnetic susceptibility analysis", "petrographic analysis" and "mortar
275 bar expansion test".

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	29-265d
Sec. 2	<i>July 1, 2021</i>	38a-91vv(b)(2)
Sec. 3	<i>July 1, 2021</i>	38a-91vv(i)
Sec. 4	<i>July 1, 2021</i>	New section
Sec. 5	<i>July 1, 2021</i>	8-446
Sec. 6	<i>July 1, 2021</i>	1-210(b)(28)
Sec. 7	<i>July 1, 2021</i>	29-265e
Sec. 8	<i>July 1, 2021</i>	New section
Sec. 9	<i>July 1, 2021</i>	New section

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

Note: HHP=Healthy Homes Fund

Municipal Impact:

Municipalities	Effect	FY 22 \$	FY 23 \$	
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.

The bill also 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.

Section 3 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 4 and 5 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.

Sections 8 and 9 require specified geological reports and quarry operational plans, to be submitted to the State Geologist and the Department of Energy and Environmental Protection (DEEP). The bill also allows DEEP to establish regulations under certain conditions. These provisions are not anticipated to result in a fiscal impact.

The bill also makes other minor changes that have no fiscal impact.

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.

House "A" strikes the underlying bill and its associated fiscal impact and results in the fiscal impact described above.

The Out Years

The municipal impacts identified above would continue into the future subject to the timing and value of homes being remediated and reassessed and to the number of additional home foundations remediated as a result of the bill.

Sources: Connecticut Foundation Solutions Indemnity Company, Inc. 2019 and 2020 Audited Financial Statements

OLR Bill Analysis**sHB 6646 (as amended by House "A")******AN ACT CONCERNING CRUMBLING CONCRETE FOUNDATIONS.*****SUMMARY**

This bill makes various changes in state law concerning “crumbling foundations.” (Generally, this means concrete foundations that are failing or deteriorating due to the presence of pyrrhotite.)

It makes the Connecticut Foundation Solutions Indemnity Company (CFSIC) permanent by eliminating the current June 30, 2022, termination date and adds two gubernatorial appointees to its board of directors (§§ 2 & 3). The bill also requires CFSIC to study the extent of pyrrhotite-related foundation damage in nonresidential buildings and remits up to \$175,000 from the Healthy Homes Fund for the study’s expenses (§§ 4 & 5). 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 requires concrete aggregate quarry operators to test and report on their aggregate’s total sulfur content (“total S”). It imposes restrictions on the use of aggregate that has a relatively high total S and, in certain circumstances, requires additional testing to identify the presence of pyrrhotite. The bill authorizes the Department of Energy and Environmental Protection (DEEP) commissioner to adopt regulations on aggregate testing and impose restrictions on aggregate that contains pyrrhotite (§ 9).

The bill also:

1. eliminates the five-year cap on reduced assessments for properties made with defective concrete (§ 1) and

2. requires Connecticut concrete aggregate quarries to (1) submit an operations plan to the state geologist and DEEP commissioner annually and (2) prepare a geological source report (GSR) every four years and submit it to the same entities (§ 8).

Additionally, the bill permanently exempts certain executive branch agency records related to faulty or failing concrete foundations in residential buildings from disclosure under the Freedom of Information Act (FOIA) and applies the exemption to the same types of records held by public higher education institutions (§ 6). The bill requires executive branch agencies to keep information about claims of faulty or failing foundations confidential in perpetuity (§ 7).

*House Amendment "A": (1) eliminates provisions allowing the Connecticut Housing Finance Authority to make loans to CFSIC and issue up to \$100 million in revenue bonds; (2) adds gubernatorial appointees to CFSIC's board of directors (§ 2); (3) clarifies the reassessment provision requires properties with adjusted assessments to be revalued during normal cycles (§ 1); (4) adds the FOIA and confidentiality provisions (§§ 6 & 7); (5) modifies the GSR provision and makes the submission of an operations plan an annual requirement (§ 8); (6) eliminates the provision in the underlying bill requiring the Department of Consumer Protection commissioner to adopt regulations establishing standards for aggregate testing and replaces them with requirements for annual aggregate testing and authorization for DEEP to adopt regulations (§ 9); and (7) makes minor changes.

EFFECTIVE DATE: July 1, 2021, except the provision on assessments (§ 1) is effective upon passage.

§ 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. The property's assessment must be updated with each revaluation and reflect any diminished value.

§ 2 — CFSIC BOARD OF DIRECTORS

The bill requires the governor to appoint two members to CFSIC's volunteer board of directors, one of whom must be a nonvoting, ex-officio member. By law, CFSIC's board of directors includes four legislatively appointed non-voting ex-officio members, as well as several members with experience related to various aspects of crumbling concrete foundations, including a real estate broker or agent; a municipal chief executive; insurance and banking industry representatives; and the executive directors of the Capitol Region and Northeastern Councils of Governments.

§§ 4 & 5 — STUDY OF NONRESIDENTIAL CRUMBLING CONCRETE DAMAGE

By January 1, 2023, 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 nonresidential buildings.

The bill also requires the Department of Housing to remit up to \$175,000 from surcharge remittances transferred to the Healthy Homes Fund during the 2021 calendar year to CFSIC for research, development, and administrative expenses related to the report described above. (The Healthy Homes Fund includes revenue from an annual \$12 surcharge that existing law imposes on the named insured under certain homeowners insurance policies.)

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 § 38a-91vv(c).)

§ 6 — DISCLOSURE UNDER FOIA

Current law exempts from disclosure (1) documents executive branch agencies have on claims of faulty or failing concrete foundations in residential buildings by the buildings' owners and (2) associated agency-prepared documents. Currently, the disclosure protection lasts until the later of May 25, 2023, or seven years after the agency receives the documents. The bill makes the disclosure exemption permanent.

The bill also makes minor changes that specify which records are covered. Under the bill, the executive branch agency protection applies to (1) any records the agencies maintain or keep on file related to claims of or testing for faulty or failing residential concrete foundations, rather than only those related to owners' claims, and (2) both documents and materials the agencies prepare related to the records.

Lastly, the bill extends disclosure protection to records public higher education institutions maintain or keep on file, or documents or materials the institutions prepare, concerning claims of and testing for faulty or failing concrete foundations.

§ 7 — CONFIDENTIALITY OF INFORMATION

Current law generally requires executive branch agencies to keep documentation they receive or obtain related to owners' claims of faulty or failing residential concrete foundations and related agency-prepared materials confidential for at least seven years from the date of receipt. The bill eliminates the seven-year cap, thus requiring this information to be kept confidential permanently.

§ 8 — GSR AND OPERATIONS PLAN REQUIREMENT

GSR

By January 1, 2022, the bill requires the operator of each Connecticut quarry established on or before July 1, 2021, that produces concrete aggregate to prepare a geological source report (GSR) and submit it to the state geologist and DEEP commissioner. Similarly, before using or

selling concrete aggregate, the operator of a new quarry must prepare and submit a GSR.

Under the bill, each concrete aggregate quarry must update and submit its GSR quadrennially.

GSR Requirements

The GSR must be prepared as the commissioner requires and must include:

1. 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 by a qualified geologist; and
5. core sample analyses completed by a qualified geologist unless the quarry is active and the commissioner determines the quarry's performance history is satisfactory.

A "qualified geologist" is a geologist certified by the American Institute of Professional Geologists, licensed by the National Association of State Boards of Geology, or certified or licensed by another organization deemed suitable by the state geologist.

Operations Plan

By January 1, 2022, and annually thereafter, the bill requires concrete aggregate quarry operators to provide the quarry's operations plan to the state geologist and DEEP commissioner.

§ 9 — ANNUAL AGGREGATE TESTING

Beginning July 1, 2022, and at least annually thereafter, the operator of each quarry that sells or provides aggregate intended for use in

concrete, must provide a written report to the DEEP commissioner and the state geologist, containing the results of a third-party test of the aggregate's sulfur content (total S) and further testing for pyrrhotite, if applicable. The bill exempts quarry operators from the annual requirement if tests show their aggregate has a low total S. (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.))

Under the bill, the test must be conducted by a third-party certified or accredited to conduct testing in accordance with American Society for Testing Materials standard C33/C33M, Standard Specification for Concrete Aggregates. The certification or accreditation must be provided by the International Organization for Standardization, United States Army Corps of Engineers, American Association of State Highway and Transportation Officials, International Accreditation Service, or a similar organization.

The bill authorizes the DEEP commissioner to adopt regulations to implement the bill's aggregate testing provisions. If adopted, the regulations must include definitions for the following terms: "rapid total sulfur test," "x-ray fluorescence analysis," "purge and trap gas chromatography analysis," "analysis by combustion furnace," "x-ray diffraction," "magnetic susceptibility analysis," "petrographic analysis," and "mortar bar expansion test."

Total S Test

Each test must include 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,
3. analysis by combustion furnace, or

4. other technology deemed at least as accurate by the state geologist.

The bill specifies that representative samples must be (1) collected and managed in accordance with American Society for Testing and Materials standard D75/D75M, Standard Practice for Sampling Aggregates, and (2) reduced to a size appropriate for laboratory testing and pulverized for analysis.

Results. If testing shows the sample's total S by mass is more than 1%, the operator cannot sell or otherwise provide the aggregate for use in concrete.

If testing shows the sample's total S by mass is less than 0.1%, a quarry operator (1) may sell or provide such aggregate for use in concrete four years, beginning on the date of receipt of such test results; and (2) does not need to submit test results to the DEEP commissioner and state geologist during that period.

If testing shows the sample's total S falls in between these thresholds, then further testing is required.

Further Testing for Pyrrhotite

Required Testing. If the total S of the sample is 0.1% or more, but less than 1% (by mass), then the sample must be further tested 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.

If the sample contains pyrrhotite, a petrographic analysis must be conducted to determine whether the aggregate can be used. The analysis must be based on (1) American Society for Testing and Materials standards C295, Standard Guide for Petrographic Examination of Aggregates for Concrete, and (2) C294, Standard Descriptive Nomenclature for Constituents of Concrete Aggregates.

Additional Testing and Restrictions. If testing shows that

pyrrhotite is present and the total S by mass is 0.1% or more but less than 1%, then DEEP’s commissioner, in consultation with the state geologist, may do the following:

1. require the quarry operator to conduct additional testing, including a mortar bar expansion test pursuant to American Society for Testing and Materials standard C1293, Standard Test Method for Determination of Length Change of Concrete Due to Alkali-Silica Reaction, or C227, Standard Test Method for Potential Alkali Reactivity of Cement-Aggregate Combinations; and
2. impose restrictions on selling or using the aggregate for concrete.

BACKGROUND

Related Bill

HB 6236 (File 337), favorably reported by the Higher Education and Employment Advancement Committee, contains substantially similar FOIA provisions, but it does not eliminate the seven-year retention provision.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/31/2021)