

SENATE No. 2804

The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court
(2021-2022)
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SENATE, April 4, 2022.

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petition (accompanied by bill, Senate, No. 548) of Anne M. Gobi, Eric P. Lesser, Brian M. Ashe, Joanne M. Comerford and other members of the General Court for legislation relative to crumbling concrete foundations, reports the accompanying bill (Senate, No. 2804).

For the committee,
Rebecca L. Rausch

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act addressing crumbling concrete foundations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3B of chapter 7 of the General Laws is hereby amended by
2 inserting after the words “twenty-one A” the following words:- , section sixteen of chapter
3 twenty-one B.

4 SECTION 2. Section 97 of chapter 13 of the General Laws is hereby amended by
5 inserting at the end thereof the following words:-

6 Said board shall require all licensed home inspectors who perform an inspection on a
7 residential home for the purpose of a sale or lease of the home to provide the potential buyer or
8 lessee information regarding the possible presence of pyrite or pyrrhotite in the concrete
9 foundation, prepared by the crumbling concrete relief agency established by section 2 of chapter
10 23B.

11 SECTION 3. Section 2 of chapter 21B of the General Laws is hereby amended by
12 inserting the following words:-

13 “Aggregate”, granular materials such as gravel, sand and crushed rock that are combined
14 for a particular purpose

15 “Certified geologist”, a professional geologist certified by the American Institute of
16 Professional Geologists.

17 SECTION 4. Said chapter 21B is hereby further amended by adding the following new
18 section:-

19 Section 16. (a) Any person seeking to mine, expand, excavate or otherwise operate a
20 quarry for the purpose of producing aggregate concrete for sale or use in foundations, structural
21 elements, or infrastructure such as roadways and bridges shall submit to the commissioner and
22 the state geologist an application for a license to conduct such quarry activity. Each license
23 application shall consist of: (i) a description of the geographic location of the quarry; (ii) a quarry
24 operations plan, including without limitation mining, processing, storage, and quality control
25 methods; (iii) a geological source report, consistent with the provisions of paragraph (b) of this
26 section; and (iv) the results of aggregate testing for the presence of pyrite or pyrrhotite,
27 consistent with the provisions of paragraph (c) of this section. Each license application shall be
28 accompanied by a fee in an amount to be determined by the commissioner. Fees received by the
29 department under this section shall be used to implement the provisions of this section, provided
30 that any surplus fee receipts shall be deposited into the crumbling concrete assistance fund
31 established in section 2RRRRR of chapter 29.

32 (b) The geological source report required by this section shall be prepared by a certified
33 geologist in a form and manner prescribed by the commissioner, in consultation with the state
34 geologist and a representative nominated by the Massachusetts Concrete and Aggregate

35 Producers, and shall include, without limitation: (i) a description of the characteristics of the
36 aggregate to be excavated at the subject quarry; (ii) a description of the products to be produced
37 by such quarry; (iii) a copy of the results of an inspection of face material and geologic log
38 analysis conducted within the preceding 60 days; and (iv) analyses of grab or core samples.

39 (c) Aggregate testing to identify the presence of pyrite or pyrrhotite required by this
40 section shall include, without limitation, a total sulfur test to measure total sulfur content in a
41 representative sample. Aggregate testing shall be performed by a certified geologist in
42 accordance with applicable standards established by ASTM International or alternate standards
43 to be determined by the commissioner in consultation with the state geologist.

44 (d) The commissioner or their designee shall review each license application submitted
45 pursuant to this section and notify each applicant whether or not the license has been approved,
46 as well as any conditions of operation, if applicable. If the license is denied, the notification shall
47 include the reason or reasons for denial. A license granted under this section shall be valid for
48 one year from the date of approval; provided, however, that a geological source report prepared
49 in accordance with paragraph (b) of this section shall be acceptable for a period of four years
50 from the date of preparation; and provided further, that aggregate test results demonstrating a
51 total sulfur content of less than one-tenth percent-by-mass shall be acceptable for a period of four
52 years from the date of testing. No license shall be approved under this section if the total sulfur
53 content is equal to or greater one percent-by-mass. If the total sulfur content is equal to or greater
54 than one-tenth percent-by-mass but less than one percent-by-mass, the license shall be denied
55 unless the state geologist, in their sole discretion, recommends approval to the commissioner
56 consistent with applicable ASTM International standards. The state geologist may require
57 additional testing or information to justify an approval recommendation.

58 (e) A person owning or operating a quarry subject to licensure pursuant to this section
59 shall maintain all records relevant to such licensure and quarry operation, including without
60 limitation a record of the aggregate source in concrete batches, for a period of not less than 30
61 years.

62 (f) A person owning or operating a quarry without a license as required by this section
63 shall be: (i) liable in perpetuity for property damage resulting from or related to the use or sale of
64 such aggregate product; and (ii) subject to a civil penalty in an amount to be determined by the
65 commissioner, not to exceed \$500,000 in each instance. Amounts collected under this paragraph
66 shall be deposited into the crumbling concrete assistance fund established in section 2RRRRR of
67 chapter 29.

68 (g) A contractor who uses aggregate concrete produced in violation of this section shall
69 be liable in perpetuity for property damage resulting from or related to the use or sale of such
70 aggregate product, unless the violation was intentionally concealed from the contractor.

71 (h) The commissioner, in consultation with the state geologist, shall catalogue and
72 maintain the quarry data collected under this section.

73 (i) Nothing in this section shall prohibit a municipality of the Commonwealth from
74 requiring permits for quarry operation or excavation. Municipalities may establish pyrite and
75 pyrrhotite presence restrictions more stringent than those set forth in this section.

76 (j) Nothing in this section shall affect the operations of quarries producing aggregate for
77 purposes other than those described in paragraph (a).

78 (k) The department in consultation with the state geologist shall promulgate regulations
79 to implement the provisions of this section.

80 SECTION 5. Section 2 of chapter 23B of the General Laws is hereby amended by
81 inserting at the end thereof the following new paragraph:-

82 (c) There shall also be within the department a crumbling concrete relief agency to
83 provide assistance to owners of residential real property with concrete foundations that have
84 deteriorated due to the presence of pyrite or pyrrhotite. The agency shall be overseen by an
85 executive director who reports to the undersecretary. The executive director shall have the
86 authority to hire staff sufficient to meet the requirements and obligations of the agency. The
87 agency shall, without limitation: (a) provide information to the public regarding structurally
88 sound concrete and the dangers of pyrite and pyrrhotite; (b) publish a list of quarries licensed
89 pursuant to section 16 of chapter 21B and a searchable electronic database of all quarries
90 applying for such licensure, including aggregate and other testing results; and (c) administer the
91 crumbling concrete assistance fund established in section 2RRRRR of chapter 29, including
92 establishing eligibility requirements and implementing a process for impacted homeowners to
93 secure foundation repair and replacement funding from the fund. A decision on a request from an
94 impacted homeowner for such financial assistance shall be provided in writing to the homeowner
95 and shall include the information relied upon and the basis for such decision, including the
96 relevant eligibility and underwriting criteria. An impacted homeowner may request a review of
97 any decision by the agency relating to such homeowner not later than 30 days after the decision.
98 A final determination on such a request for review shall be provided in writing to the homeowner
99 not later than 30 days after receipt of the homeowner's request, unless an extension is agreed to
100 by the homeowner.

101 SECTION 6. Chapter 29 of the General Laws is hereby amended by inserting after
102 section 2QQQQQ the following section:-

103 Section 2RRRRR. (a) There shall be a Crumbling Concrete Assistance Fund. The fund
104 shall be expended to provide financial assistance to owners of residential real property for the
105 repair or replacement of concrete foundations of such property that have deteriorated due to the
106 presence of pyrite or pyrrhotite and to minimize any negative economic impacts on
107 municipalities in which such property are located. The crumbling concrete relief agency
108 established by section 2 of chapter 23B shall administer the fund and shall make expenditures
109 from the fund, without further appropriation. The agency shall seek to maximize available
110 federal reimbursements for money spent from the fund.

111 The fund shall consist of: (i) revenue from appropriations or other money authorized by
112 the general court and specifically designated to be credited to the fund; (ii) interest earned on
113 such revenues; (iii) funds from public and private sources, including but not limited to gifts,
114 grants, donations, and settlements received by the commonwealth that are specifically designated
115 to be credited to the fund; (iv) federal funds paid to the commonwealth under paragraph (b) of
116 this section; (v) monies paid to the commonwealth under paragraph (c) of this section; (vi)
117 monies paid to the commonwealth under paragraph (d) of this section; and (vi) monies paid to
118 the commonwealth under paragraph (f) of section 16 of chapter 21B. Any bond proceeds
119 deposited into the fund shall be kept separate from any and all other funds deposited into the
120 fund. Any balance in the fund at the close of a fiscal year shall be available for expenditure in
121 subsequent fiscal years and shall not be transferred to any other fund or revert to the General
122 Fund.

123 (b) The crumbling concrete relief agency established by section 2 of chapter 23B may
124 apply for, receive and deposit any federal funds, including but not limited to funds made
125 available by the United States Department of Housing and Urban Development Section 108
126 Loan Guarantee program, into the fund established by this section.

127 (c) Any entity licensed and engaged in the provision of homeowners insurance that has
128 denied or rejected claims for repair or replacement of foundations due to the presence of pyrite or
129 pyrrhotite at any time during the period beginning January 1, 2000, and continuing through
130 December 31, 2021, inclusive, shall be required to pay to the department of revenue an amount
131 equal to the total estimated or actual cost of repair or replacement, adjusted for inflation as
132 applicable, in each instance of a denial. No later than November 30, 2022, the attorney general
133 shall determine which insurers are subject to the provisions of this paragraph, including through
134 collection and review of claims denial and related documentation from impacted homeowners,
135 and shall provide a list of subject insurers to the department of revenue, the senate and house
136 committees on ways and means, the joint committee on environment, natural resources and
137 agriculture, and the joint committee on state administration and regulatory oversight no later than
138 December 31, 2022. The department of revenue shall notify subject insurers of penalties owed in
139 writing no later than March 30, 2023. Penalties owed under this paragraph shall be paid on or
140 before June 30, 2023. Penalties collected under this paragraph shall be deposited into the fund
141 established by this section. An entity failing to pay a penalty a penalty owed under this paragraph
142 shall have its license revoked and shall not be eligible for a new or renewed license for a period
143 of five years.

144 (d) Annually not later than May 1, the commissioner of revenue shall assess any
145 entity licensed and engaged in the provision of homeowners insurance in the commonwealth an

146 amount not less than 3 per cent of the entity's net profits from the provision of homeowners
147 insurance in the commonwealth during the immediately preceding tax year. Penalties collected
148 under this paragraph shall be deposited into the fund established by this section.

149 (e) Amounts issued from the fund to impacted homeowners for the repair or replacement
150 of concrete foundations that have deteriorated due to the presence of pyrrhotite shall be exempt
151 from taxation under chapter 62.

152 (f) Annually not later than June 1, the crumbling concrete relief agency shall report on the
153 activities of the fund from the previous calendar year to the senate and house committees on
154 ways and means and the joint committee on environment, natural resources and agriculture.

155 (g) The crumbling concrete relief agency shall promulgate regulations or issue other
156 guidance for the expenditure of the funds under this section.

157 SECTION 7. Chapter 59 of the General Laws is hereby amended by inserting after
158 section 59A the following section:-

159 Section 59B. (a) Notwithstanding any general or special law to the contrary, an owner of
160 real property in the commonwealth may apply for a residential property tax abatement due to the
161 presence of pyrite or pyrrhotite minerals in the foundation. The presence of pyrite or pyrrhotite
162 shall be established by: (i) not less than 2 core samples from the foundation proving the presence
163 of pyrite or pyrrhotite; or (ii) a certified visual inspection conducted by a professional civil
164 engineer. The owner shall also provide a certified estimate of the cost to repair or replace the
165 foundation. Upon receipt of such documentation, a municipal board of assessors or equivalent
166 entity shall determine a value per square foot of the foundation and percentage of functional
167 obsolescence. If an abatement is sought on multiple properties within a municipality the board of

168 assessors may determine a general value per square foot of foundation and percentage of
169 functional obsolescence to be used for all properties within said municipality. The board of
170 assessors shall use the value and percentage to calculate the reduction in assessment for each
171 affected property. Such reductions shall be effective until the foundation is repaired or replaced.

172 SECTION 8. Chapter 143 of the General Laws is hereby amended by adding the
173 following section:-

174 Section 110. Notwithstanding any general or special law to the contrary, fees for building
175 permits for work associated with crumbling concrete foundations replacement shall be waived.
176 In order to qualify for the waiver of fees, the applicant shall provide written documentation
177 showing that pyrite or pyrrhotite minerals are present in the foundation to be replaced. Nothing
178 in this section shall waive any of the permit application requirements, including, but not limited
179 to, holding public hearings, associated with a permit application. A determination to waive fees
180 is not a guarantee of the issuance of a permit.

181 SECTION 9. Within 2 months of passage of this act, active quarries subject to licensure
182 under the provisions of section 4 of this act shall either submit a complete license application or
183 obtain interim approval from the state geologist to continue operations for a period of not more
184 than six months. Interim operations approvals shall not be renewed.