SENATE DOCKET, NO. 34 FILED ON: 1/10/2023

SENATE . . . . . No. 495

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to crumbling concrete foundations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Anne M. Gobi	*Worcester and Hampshire*	
Ryan C. Fattman	*Worcester and Hampden*	*1/12/2023*
Brian M. Ashe	*2nd Hampden*	*1/30/2023*
Angelo J. Puppolo, Jr.	*12th Hampden*	*2/2/2023*
Jacob R. Oliveira	*Hampden, Hampshire and Worcester*	*2/7/2023*
Paul K. Frost	*7th Worcester*	*2/7/2023*
Hannah Kane	*11th Worcester*	*2/7/2023*
Kimberly N. Ferguson	*1st Worcester*	*2/7/2023*
Peter J. Durant	*6th Worcester*	*2/9/2023*
James J. O'Day	*14th Worcester*	*2/14/2023*
Meghan K. Kilcoyne	*12th Worcester*	*2/14/2023*
Todd M. Smola	*1st Hampden*	*2/14/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*2/14/2023*
Donald R. Berthiaume, Jr.	*5th Worcester*	*2/15/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/23/2023*
Joseph D. McKenna	*18th Worcester*	*2/23/2023*
James B. Eldridge	*Middlesex and Worcester*	*2/23/2023*
John J. Cronin	*Worcester and Middlesex*	*2/23/2023*

Adam Gomez	*Hampden*	*2/27/2023*
Patricia A. Duffy	*5th Hampden*	*2/28/2023*
Patrick Joseph Kearney	*4th Plymouth*	*2/28/2023*
Jonathan D. Zlotnik	*2nd Worcester*	*3/2/2023*
Michael O. Moore	*Second Worcester*	*3/6/2023*
Patrick M. O'Connor	*First Plymouth and Norfolk*	*3/7/2023*
Susannah M. Whipps	*2nd Franklin*	*3/15/2023*
Paul R. Feeney	*Bristol and Norfolk*	*3/16/2023*
Natalie M. Higgins	*4th Worcester*	*3/17/2023*
Kate Donaghue	*19th Worcester*	*3/23/2023*
Michelle L. Ciccolo	*15th Middlesex*	*3/29/2023*
Marcus S. Vaughn	*9th Norfolk*	*3/29/2023*
Kristin E. Kassner	*2nd Essex*	*4/11/2023*
John C. Velis	*Hampden and Hampshire*	*4/12/2023*
Joan B. Lovely	*Second Essex*	*9/26/2023*
Bruce E. Tarr	*First Essex and Middlesex*	*9/26/2023*
Robyn K. Kennedy	*First Worcester*	*12/5/2023*
Michael P. Kushmerek	*3rd Worcester*	*1/10/2024*

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By Ms. Gobi, a petition (accompanied by bill, Senate, No. 495) of Anne M. Gobi, Ryan C. Fattman, Brian M. Ashe, Angelo J. Puppolo, Jr. and other members of the General Court for legislation relative to crumbling concrete foundations. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *548* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to 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:

SECTION 1. Section 3B of chapter 7 of the General Laws is hereby amended by inserting after the words “twenty-one A” the following words:- , section eighty-eight of chapter 6C.

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

Said board shall require all licensed home inspectors who perform an inspection on a residential home for the purpose of a sale or lease of the home to provide the potential buyer or lessee information regarding the possible presence of pyrite or pyrrhotite in the concrete

foundation, prepared by the crumbling concrete relief agency established by section 2 of chapter 23B.

SECTION 3. Chapter 6C of the General Laws is hereby amended by adding the following section:-

Section 78. (a) For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Aggregate", granular materials such as gravel, sand and crushed rock that are combined for a particular purpose.

"Certified geologist", a professional geologist certified by the American Institute of Professional Geologists.

"Concrete aggregate", natural sand, natural gravel or crushed aggregate products produced from ledge rock.

(b) Any person seeking to mine, expand, excavate or otherwise operate a quarry, sand and gravel operation, or any other aggregate source for the purpose of producing concrete aggregate for sale or use in foundations, structural elements or infrastructure, such as roadways and bridges, shall submit to the department and the state geologist an application for a license to conduct such activity.

Each license application shall consist of: (i) a description of the geographic location of the aggregate source; (ii) an operations plan, including, but not limited to, mining, processing, storage and quality control methods; (iii) a geological source report, consistent with subsection (c); and (iv) the results of aggregate testing for the presence of pyrite or pyrrhotite, consistent

with subsection (d). Each license application shall be accompanied by a fee in an amount to be determined by the department. Fees received by the department under this section shall be used to implement this section; provided, however, that any surplus fee receipts shall be deposited into the Crumbling Concrete Assistance Fund.

(c) The geological source report required in subsection (b) shall be prepared by a certified geologist in a form and manner prescribed by the department, in consultation with the state geologist, a representative nominated by the Massachusetts Aggregate and Asphalt Pavement Association, and a representative nominated by the Massachusetts Concrete and Aggregate Producers Association, Inc., and shall include, but not be limited to: (i) a description of the characteristics of the aggregate to be excavated at the subject location; (ii) a description of the products to be produced at such location; (iii) a copy of the results of an inspection of face material and geologic log analysis conducted not more than 60 days prior to the date of the report; and (iv) petrographic analyses of grab or core samples representative of the material being actively mined. A geological source report prepared under this subsection shall be valid for a period of 1 year from the date of preparation.

(d) Aggregate testing to identify the presence of pyrite or pyrrhotite required in subsection (b) shall include, but not be limited to, a total sulfur test to measure total sulfur content in a representative sample. Aggregate testing shall be performed by an accredited laboratory in accordance with applicable standards established by American Society of Testing and Materials International standards or alternate standards to be determined by the department in consultation with the state geologist.

(e) The Secretary of Transportation or a designee, in consultation with the state geologist, shall review each license application submitted pursuant to this section and notify each applicant whether the license has been approved and any applicable conditions of operation. If the application is denied, the notification shall include the reason for denial. A license granted under this section shall be valid for 1 year from the date of approval. A license shall be approved if the total sulfur content is less than 0.1 per cent by mass. A license shall not be approved if the total sulfur content is not less than 1 per cent by mass. If the total sulfur content is equal to or greater than 0.1 per cent by mass but less than 1 per cent by mass, the license applicant shall be required to perform x-ray diffraction, magnetic susceptibility, or petrographic analyses to determine the presence and relative abundance of pyrrhotite in the sample. A license shall be approved if the results of said additional tests indicate that no pyrrhotite is present in the sample. A license shall not be approved if the results of said tests indicate that pyrrhotite is present in the sample. Aggregate test results demonstrating a total sulfur content of less than 0.1 percent by mass for five consecutive years shall be valid for a period of five years from the date of the most recent testing, provided, however, that annual geological source reports are submitted to the department. The state geologist may require additional testing or information to justify an approval recommendation.

(f) A person owning or operating an aggregate source subject to licensure pursuant to this section shall maintain all records relevant to such licensure and operation, including, but not limited to, a record of sale for all aggregate, for not less than 10 years.

(g) A person owning or operating a concrete production facility for the purpose of sale or use in foundations, structural elements, or infrastructure, such as roadways and bridges, in

receipt of aggregate material from a source licensed pursuant to this section shall maintain a record of the aggregate sources used in individual concrete batches for not less than 10 years.

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

(i) Nothing in this section shall prohibit a municipality from requiring permits for quarry operation or excavation or from establishing pyrite and pyrrhotite presence restrictions that are more stringent than those set forth in this section.

(j) Nothing in this section shall affect the operations of quarries producing aggregate for purposes other than those described in subsection (b).

(k) The department, in consultation with the state geologist, shall promulgate regulations to implement this section.

SECTION 4. Section 78 of chapter 6C of the General Laws shall be effective on December 31, 2023; provided, however, that entities licensed to operate a quarry or sand and gravel operation in the commonwealth before the effective date of this act that are affected by said section 88 of said chapter 6C shall meet the requirements of said section 78 of said chapter 6C not later than December 31, 2023; provided further, that any work conducted by such an entity prior to December 31, 2023 shall comply with existing regulations.

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

(c) There shall also be within the department a crumbling concrete relief agency to provide assistance to owners of residential real property with concrete foundations that have

deteriorated due to the presence of pyrite or pyrrhotite. The agency shall be overseen by an executive director who reports to the undersecretary. The executive director shall have the authority to hire staff sufficient to meet the requirements and obligations of the agency. The agency shall, without limitation: (a) provide information to the public regarding structurally sound concrete and the dangers of pyrite and pyrrhotite; (b) publish a list of quarries licensed pursuant to section 88 of chapter 6C and a searchable electronic database of all quarries applying for such licensure, including aggregate and other testing results; and (c) administer the crumbling concrete assistance fund established in section 2RRRRR of chapter 29, including establishing eligibility requirements and implementing a process for impacted homeowners to secure foundation repair and replacement funding from the fund. A decision on a request from an impacted homeowner for such financial assistance shall be provided in writing to the homeowner and shall include the information relied upon and the basis for such decision, including the relevant eligibility and underwriting criteria. An impacted homeowner may request a review of any decision by the agency relating to such homeowner not later than 30 days after the decision. A final determination on such a request for review shall be provided in writing to the homeowner not later than 30 days after receipt of the homeowner's request, unless an extension is agreed to by the homeowner.

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

Section 2RRRRR. (a) There shall be a Crumbling Concrete Assistance Fund. The fund shall be expended to provide financial assistance to owners of residential real property for the repair or replacement of concrete foundations of such property that have deteriorated due to the presence of pyrite or pyrrhotite and to minimize any negative economic impacts on

municipalities in which such property are located. The crumbling concrete relief agency established by section 2 of chapter 23B shall administer the fund and shall make expenditures from the fund, without further appropriation. The agency shall seek to maximize available federal reimbursements for money spent from the fund.

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

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

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

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

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

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

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

assessors shall use the value and percentage to calculate the reduction in assessment for each affected property. Such reductions shall be effective until the foundation is repaired or replaced.

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

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

SECTION 9. Within 2 months of passage of this act, active quarries subject to licensure under the provisions of section 3 of this act shall either submit a complete license application or obtain interim approval from the state geologist to continue operations for a period of not more than six months. Interim operations approvals shall not be renewed.